

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN**

In re	)
	) Chapter 9
	)
CITY OF DETROIT, MICHIGAN,	) Case No. 13-53846
	)
Debtor.	) Hon. Steven W. Rhodes
	)
	) <b>Expedited Consideration</b>
	) <b>Requested</b>

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**THE OBJECTORS' MOTION TO ADMIT CERTAIN DEPOSITION  
TESTIMONY OF KEVYN ORR AND KENNETH BUCKFIRE**

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The Objectors<sup>1</sup> hereby move this court pursuant to Federal Rules of Civil Procedure 26 and 32(a), made applicable to this proceeding by Federal Rules of Bankruptcy Procedure 7026 and 7032, for entry of the proposed order attached hereto as Exhibit 1 admitting the deposition testimony identified in Exhibit 6-A and Exhibit 6-B<sup>2</sup> for purposes of the upcoming evidentiary hearing relating to the

*Motion of Debtor for Entry of an Order (I) Authorizing the Assumption of that*

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<sup>1</sup> This motion is joined by Syncora Capital Assurance Inc. and Syncora Guarantee Inc. ("Syncora"), Erste Europäische Pfandbrieffund Kommunalkreditbank Aktiengesellschaft in Luxemburg S.A., DEPFA Bank PLC, Ambac Assurance Corporation, National Public Finance Guarantee Corporation, Assured Guaranty Municipal Corp., Financial Guaranty Insurance Company, the Police and Fire Retirement System of the City of Detroit and the General Retirement System of the City of Detroit, and the Official Committee of Retirees.

<sup>2</sup> In an effort to minimize the number of motions submitted to the Court, all of the deposition designations submitted by the undersigned objectors are contained in Exhibits 6-A and 6-B.



*Certain Forbearance and Optional Termination Agreement Pursuant to Section 365(a) of the Bankruptcy Code, (II) Approving Such Agreement Pursuant to Rule 9019, and (III) Granting Related Relief*, dated July 18, 2013 [Docket No. 17] (the “Assumption Motion”). In support thereof, the Objectors state as follows:

### **JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

### **LEGAL STANDARD**

2. Federal Rule of Civil Procedure 32(a)(1) provides that, “[a]t a hearing or trial, all or part of a deposition may be used against a party on these conditions: (A) the party was present or represented at the taking of the deposition or had reasonable notice of it; (B) it is used to the extent it would be admissible under the Federal Rules of Evidence if the deponent were present and testifying; and (C) the use is allowed by Rule 32(a)(2) through (8).” FED. R. CIV. P. 32(a)(1).

3. Under Federal Rule of Civil Procedure 32(a)(3), “[a]n adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party’s officer, director, managing agent, or designee under Rule 30(b)(6) or 31(a)(4).” FED. R. CIV. P. 32(a)(3).

4. In the Sixth Circuit, a “managing agent” for purposes of Rule 32(a)(3) is any person who possesses the following authority and attributes:

- a. Acts with superior authority and is invested with general powers to exercise his judgment and discretion in dealing with his principal’s affairs (as distinguished from a common employee, who does only what he is told to do; has no discretion about what he can or cannot do; and is responsible to an immediate superior who has control over his acts);
- b. Can be depended upon to carry out his principal’s directions to give testimony at the demand of a party engaged in litigation with his principals; and
- c. Can be expected to identify himself with the interests of his principal rather than those of the other party.

*In re Air Crash at Lexington, Kentucky, August 27, 2006, 71 Fed. R. Serv. 3d 313, 2008 WL 2954971, at \*4 (E.D. Ky. Jul. 30, 2008) (citing Brandon v. Art Centre Hospital (Osteopathic), 366 F.2d 369, 372 (6th Cir. 1966)).*

#### **RELIEF REQUESTED AND BASIS FOR RELIEF**

5. In this case, the Objectors are submitting the deposition testimony of Kevyn Orr and Kenneth Buckfire, both of whom qualify as managing agents for purposes of Rule 32(a)(3). The deposition testimony that the Objectors intend to submit is attached hereto as Exhibits 6-A and 6-B.

6. The deposition testimony of Kevyn Orr satisfies the standards of Federal Rule 32. First, Mr. Orr was represented at his deposition by Jones Day. Second, the Objectors intend to use Mr. Orr’s deposition testimony to the extent it

would be admissible under the Federal Rules of Evidence if Mr. Orr were present and testifying (*i.e.*, as party admissions under Federal Rule of Evidence 801(2)(d)). Third, Mr. Orr was one of the City’s “managing agents” at the time of his deposition on August 30, 2013.

7. At that time, Mr. Orr was emergency manager of the City of Detroit. (Exhibit 6-C, Orr Dep. Excerpts 83:13-20; *Declaration of Kevyn D. Orr in Support of Detroit, Michigan’s Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code* [Docket No. 11] (“Orr Declaration”) ¶ 1.) As emergency manager, Mr. Orr acted for, and in the place and stead of, the City’s elected mayor and city council, and exercised authority over nearly all aspects of the City’s government and management, including, but not limited to, budgeting, operations, financial affairs, contracts, appropriations, collective bargaining, and the use, sale and lease of assets. (Orr Declaration ¶ 2.)

8. Given the broad scope of Mr. Orr’s authority, Mr. Orr acts, as set out in *In re Air Crash*, “with superior authority and is invested with general powers to exercise his judgment and discretion in dealing with [the City’s] affairs.” Accordingly, he qualifies as a managing agent for purposes of Federal Rule 32(a)(3).

9. The deposition testimony of Kenneth Buckfire also satisfies the standards of Federal Rule 32. First, Mr. Buckfire was represented at his deposition

by Jones Day. Second, the Objectors intend to use Mr. Buckfire's deposition testimony to the extent it would be admissible under the Federal Rules of Evidence if Mr. Buckfire were present and testifying (*i.e.*, as party admissions under Federal Rule of Evidence 801(2)(d)). Third, Mr. Buckfire was one of the City's "managing agents" at the time of his deposition on August 30, 2013.

10. At that time, Mr. Buckfire was the co-founder and co-president of Miller Buckfire & Company, which was the company engaged by the City as its investment banker. (Exhibit 6-D, Buckfire Dep. Excerpts 11:14-20.) As part of this engagement, "Mr. Buckfire was the lead negotiator for the City on the business terms of what became the forbearance agreement." (Exhibit 6-C, Orr Dep. Excerpts 15:25-16:4.) As lead negotiator, Mr. Orr "directed Mr. Buckfire to do whatever needed to be done to get the agreement in principle resolved and signed." (*Id.* at 76:13-15.) To accomplish this task, Mr. Orr "authorized Mr. Buckfire to negotiate the best possible deal he could with the Swap counterparties." (*Id.* at 36:25-37:4.)

11. Accordingly, Mr. Buckfire qualifies as a managing agent under Federal Rule 32. To begin, Mr. Buckfire had the authority to exercise his judgment and discretion to negotiate the best possible terms with the Swap Counterparties. *See In re Air Crash*, 2008 WL 2954971, at \*4 (stating that a managing agent is a person who "is invested with general powers to exercise his

judgment and discretion in dealing with his principal's affairs . . . ."). And, after Mr. Buckfire had negotiated each of the terms of the Forbearance Agreement, he was the one who instructed Mr. Orr that the City should take the deal Mr. Buckfire had negotiated. (Exhibit 6-C, Orr Dep. Excerpts 37:5-9.) In addition, Mr. Buckfire's appearance at his deposition and the upcoming evidentiary hearing demonstrate that he satisfies the other two factors set out in *In re Air Crash* — namely, that he can (a) be depended upon to carry out the City's direction to provide testimony and (b) be expected to identify himself with the interests of the City as opposed to the Objectors.

12. Finally, it should be noted that, in addition to the fact that the depositions of Messrs. Orr and Buckfire are independently admissible, granting this Motion will permit counsel to focus their cross-examinations on the most salient points, which will help to streamline the hearing on the Assumption Motion.

13. In filing this motion, the Objectors reserve their right to designate additional deposition testimony based on the evidence introduced at the hearing, consistent with any Orders of the Court regarding post-hearing submissions.

*[Remainder of this page intentionally left blank.]*

WHEREFORE, the Objectors request that this Court grant the relief requested in this motion and enter an order consistent with the proposed order attached as Exhibit 1.<sup>3</sup>

Dated: September 19, 2013

Respectfully submitted,

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<sup>3</sup> In accordance with Local Rule 9014-1, on September 18, 2013, William Arnault, counsel for Syncora, conferred telephonically with Gregory Shumaker, counsel for the City, and sought concurrence regarding the issues the Objectors intended to raise in this motion. Mr. Shumaker refused to concur in the Objectors' motion.

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## **Summary of Exhibits**

Exhibit 1 - Proposed Order

Exhibit 2 - Notice

Exhibit 3 - Brief [Not Required]

Exhibit 4 - Certificate of Service [To be Filed]

Exhibit 5 - Affidavit [N/A]

Exhibit 6-A - Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

Exhibit 6-B - Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

Exhibit 6-C - Excerpts From Deposition of Kevyn Orr

Exhibit 6-D - Excerpts From Deposition of Kenneth Buckfire

**Exhibit 1**  
**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN**

In re )  
CITY OF DETROIT, MICHIGAN, ) Chapter 9  
Debtor. ) Case No. 13-53846  
            ) ) Hon. Steven W. Rhodes  
            ) )

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**ORDER GRANTING THE OBJECTORS' MOTION TO ADMIT CERTAIN  
DEPOSITION TESTIMONY OF KEVYN ORR AND KENNETH  
BUCKFIRE**

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This matter coming before the Court on the motion of the Objectors for the entry of an order admitting the deposition testimony identified in Exhibit 6-A and Exhibit 6-B to *The Objectors' Motion to Admit Certain Deposition Testimony of Kevyn Orr and Kenneth Buckfire*; the Court having reviewed the Objectors' motion; and the Court having determined that the legal and factual bases set forth in the motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Objectors' motion is GRANTED.
2. The deposition testimony identified in Exhibit 6-A and Exhibit 6-B to the Objectors' motion is admitted.
3. The joining Objectors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the motion.

4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

**Exhibit 2**  
**Notice of Motion and Opportunity to Object**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN**

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

)  
Chapter 9  
)  
Case No. 13-53846  
)  
Hon. Steven W. Rhodes  
)

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**NOTICE OF THE OBJECTORS' MOTION TO ADMIT CERTAIN DEPOSITION  
TESTIMONY OF KEVYN ORR AND KENNETH BUCKFIRE**

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**PLEASE TAKE NOTICE** that on September 19, 2013, the Objectors, filed *The Objectors' Motion to Admit Certain Deposition Testimony of Kevyn Orr and Kenneth Buckfire* (the “Motion”) in the United States Bankruptcy Court for the Eastern District of Michigan (the “Bankruptcy Court”) seeking entry of an order to admit certain deposition testimony of Kevyn Orr and Kenneth Buckfire.

**PLEASE TAKE FURTHER NOTICE** that your rights may be affected by the relief sought in the Motion. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

**PLEASE TAKE FURTHER NOTICE** that if you do not want the Bankruptcy Court to grant the Objectors’ Motion or you want the Bankruptcy Court to consider your views on the Motion, by **October 4, 2013 at 4:00 p.m. (EDT)** you or your attorney must:<sup>1</sup>

1. File with the court a written response to the Motion. explaining your position explaining your position with the Bankruptcy Court electronically through the Bankruptcy Court’s electronic case filing system in accordance with the Local Rules of the Bankruptcy Court or by mailing any objection or response to:<sup>2</sup>

United States Bankruptcy Court  
Theodore Levin Courthouse  
231 West Lafayette Street  
Detroit, MI 48226

You must also serve a copy of any objection or response upon:

James H.M. Sprayregen, P.C.

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<sup>1</sup> Concurrently herewith, the Objectors are seeking expedited consideration and shortened notice of the Motion. If the Court grants such expedited consideration and shortened notice, the Objectors will file and serve notice of the new response deadline.

<sup>2</sup> A response must comply with F. R. Civ. P. 8(b), (c) and (e).

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2. If an objection or response is timely filed and served, the clerk will schedule a hearing on the Motion and you will be served with a notice of the date, time and location of the hearing.

**PLEASE TAKE FURTHER NOTICE that if you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the Motion and may enter an order granting such relief.**

*[Remainder of this page intentionally left blank]*

Dated: September 19, 2013

Respectfully submitted,

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**Exhibit 3**  
**None [Brief Not Required]**

**Exhibit 4**

**None [Separate Certificate of Service to be Filed]**

**Exhibit 5**

**None**

**Exhibit 6A**

**Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

# **Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

## **Designation:**

10:24 Q. Mr. Orr, good morning.  
25 A. Good morning.

## **Designation:**

11:13 Q. If I ask a question that isn't clear, will you ask me  
14 to rephrase it?  
15 A. Yes.  
16 Q. And if I ask a question and you answer it, I'm going  
17 to assume that you understood it; is that fair?  
18 A. Yes.  
19 Q. Mr. Orr, in the course of negotiating and executing  
20 the forbearance agreement, did you receive legal  
21 advice?  
22 A. Yes. The forbearance and the optional payment  
23 agreement?  
24 Q. That's right.  
25 A. And we'll refer to that as forbearance agreement going  
12: 1 forward?  
2 Q. I was going to call it that because it's shorter, if  
3 that's okay.  
4 A. Sure. That's fine.  
5 Q. But you're right. That's what I mean.  
6 A. Yes. Yes, I did receive legal advice.  
7 Q. And did you receive legal advice from the City's law  
8 department on the subject?  
9 A. I don't recall. I don't think so.  
10 Q. Did you receive legal advice from Jones Day on the  
11 subject?  
12 A. Yes, among others.  
13 Q. And I take it that you relied on the legal advice you  
14 received in making the decision to execute the  
15 forbearance agreement?  
16 A. Legal advice and business advice from our consultants,  
17 yes.  
18 Q. Who were the others that you obtained legal advice  
19 from?  
20 A. May have obtained legal advice from our local counsel.  
21 Q. Ah, yes.  
22 A. And in fact I said I don't recall if I obtained any  
23 legal advice from the corporation counsel's office. I  
24 just don't recall, so I'm not going to speculate.  
25 Q. Three possible. You know you got legal advice from  
13: 1 Jones Day.  
2 A. Absolutely.  
3 Q. You may have or did from local counsel.  
4 A. Yes.  
5 Q. And you can't recall whether you did from the City's  
6 law department.  
7 A. Yes.  
8 Q. Are you waiving the attorney-client privilege in  
9 connection with the motion to assume the forbearance

# Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

10 agreement?

11 MR. SHUMAKER: Objection, could call for  
12 the revelation of attorney-client communication.

13 You can answer the question, but yes or no.

14 A. No.

15 BY MR. HACKNEY:

16 Q. If I ask you questions regarding the legal advice  
17 rendered to you in connection with the forbearance  
18 agreement's negotiation or execution, you will refuse  
19 to answer those questions on the grounds of the  
20 attorney-client privilege; is that correct?

21 MR. SHUMAKER: If you're asking what the  
22 advice is, certainly. The communications between  
23 counsel and what he was -- what he was advised on,  
24 certainly.

25 THE WITNESS: Right.

14: 1 BY MR. HACKNEY:

2 Q. Okay. That's correct?

3 A. Yes. That is correct.

4 Q. So if I ask you what your view is on the likelihood  
5 that the City's Swap and validity arguments will  
6 prevail, you will assert the attorney-client  
7 privilege; is that correct?

8 A. Yes, more than likely.

9 Q. If I ask you your view on the likelihood that the  
10 pledge of the gaming revenues under the Michigan  
11 Gaming Act is an invalid pledge, you'll assert the  
12 attorney-client privilege, correct?

13 A. Yes, more than likely.

14 Q. If I ask you questions regarding the likelihood that  
15 the City would prevail on a claim or defense against  
16 the Swap counterparties, you'll assert the  
17 attorney-client privilege, correct?

18 A. Yes, more than likely.

19 Q. And I guess I gotta clarify. When you say more than  
20 likely, I mean are you asserting the privilege with  
21 respect to those types of questions? I'm trying to  
22 save having to --

23 A. Sure.

24 MR. SHUMAKER: Let me state for the record  
25 you can ask questions as to whether those -- those  
15: 1 factors were considered by Mr. Orr, but obviously if  
2 you're going to ask what he was -- what he was advised  
3 by counsel, then I'm going to instruct him not to  
4 answer.

5 A. When I say more than likely, that's -- that's exactly  
6 the distinction that I'm trying to make. Did I have  
7 discussions with my counsel? Yes. Did those  
8 discussions take into consideration some of those  
9 factors? Yes. Am I going to tell you what those  
10 discussions were and what, if any, conclusions were  
11 made? No.

12 BY MR. HACKNEY:

13 Q. Okay. Fair enough.

14 On July 15, 2013, the City entered into  
15 what we're going to call the forbearance agreement

# **Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

16 with the Swap counterparties and the service  
17 corporations; is that correct?  
18 A. Yes.

## **Designation:**

15:25 Q. Well, let me -- let me ask it a different way, which  
16: 1 is isn't it true that Mr. Buckfire was the lead  
2 negotiator for the City on the business terms of what  
3 became the forbearance agreement?  
4 A. Yes.  
5 Q. And Mr. Buckfire has testified that the negotiations  
6 in earnest regarding what became the forbearance  
7 agreement were conducted between June 4th and  
8 June 11th of 2013?  
9 A. I don't recall those specific dates, but I think  
10 that's the right time frame. Let me -- let me try to  
11 be as clear as I can so we can move on. We began  
12 talking, discussing ways with my advisors, without  
13 discussing what we discussed, to provide the City with  
14 liquidity almost immediately upon my appointment. The  
15 negotiations that you're referring to I believe did  
16 occur within that time frame.

## **Designation:**

16:23 Q. And as he was the lead negotiator, he's probably the  
24 guy who would know, right?  
25 A. Sure, absolutely.

## **Designation:**

18:14 Q. If Mr. Buckfire testified there was an agreement in  
15 principle by June 11th of 2013, does that sound  
16 correct to you?  
17 A. Yes, the second -- yes. Yes, it does.

## **Designation:**

20:11 Q. Would you agree that, notwithstanding your involvement  
12 in these calls with the Swap counterparties, it's  
13 still fair to characterize Mr. Buckfire --  
14 A. Yes.  
15 Q. -- as the lead negotiator for the City?  
16 A. Yes.

## **Designation:**

20:17 Q. Using Mr. Buckfire's recollection of June 4th as kind  
18 of the kickoff of these negotiations which you don't  
19 have a basis to --  
20 A. No.  
21 Q. -- contradict --  
22 A. Not at all.  
23 Q. -- I'd like to kind of level set where you were at  
24 going in to June 4th. Okay?

## **Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

25 Your assumption prior to June 4th was that  
21: 1 the Swap counterparties could unilaterally --  
2 unilaterally terminate the Swap, correct?  
4 A. Well, my understanding was the City -- there were a  
5 series of events which put the City in default. The  
6 consent agreement prior to my appointment, the consent  
7 agreement, the declaration of a financial emergency,  
8 my appointment was an event of default. My  
9 understanding was that due to those multiple events of  
10 default, the counterparties had the ability to  
11 exercise their rights and deprive the City of much  
12 needed casino revenue.

14 Q. We'll get to the casino revenue in a moment which is  
15 something that's trapped under -- potentially trapped  
16 under the collateral agreement, right?  
17 A. Right.  
18 Q. I want to talk about the Swap agreement which can lead  
19 to a large termination payment --  
20 A. Yes.  
21 Q. -- that the service corporations might owe.  
22 A. Yes.  
23 Q. And you understand the distinction between those two  
24 documents --  
25 A. Yes.  
22: 1 Q. -- right?  
2 A. Um-hm.  
3 Q. And your assumptions prior to the June 4th meeting  
4 were that as a result of these events of default under  
5 the Swap that occurred, some of them, prior to your  
6 appointment --  
7 A. Yes.  
8 Q. -- that the Swap counterparties could unilaterally  
9 terminate the Swap and demand a sizable payment from  
10 the service corporations, correct?  
12 A. Yeah, my assumption was, my understanding was that,  
13 yes, they could terminate and demand a sizable  
14 payment, whether from the service corporations or  
15 eventually from the City. It would hit our bottom  
16 line, yes.  
18 Q. That's right because it ripples --  
19 A. Yes.  
20 Q. -- through the service corporations to the City by the  
21 service agreements, right?  
22 A. Yeah.  
24 A. If that is in fact the process, yes.  
23: 1 Q. Now, another one of your assumptions prior to June 4  
2 was that the Swap counterparties could also  
3 unilaterally trap cash under the collateral agreement,  
4 right?  
7 A. My understanding was that the Swap counterparties  
8 could instruct the custodian to exercise their rights  
9 to trap cash.  
11 Q. And that was one of the rights that they had as you  
12 were going into the negotiations with them, correct?  
15 A. My understanding -- yes. My understanding was that  
16 they had that right.

## Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

18 Q. That's why you were negotiating with them, right?  
19 A. My -- we were negotiating with them to make sure that  
20 the City had access to the revenue that it needed  
21 quite badly and that the City would not suffer the  
22 imposition of a fairly significant termination  
23 payment.  
24 Q. Now, another one of your assumptions prior to June 4  
25 was that no other party could stop the Swap  
24: 1 counterparties from either terminating the Swaps or  
2 trapping cash, correct?  
4 A. Yeah, my assumption was -- or, rather, my  
5 understanding was that the Swap counterparties had  
6 certain rights and that they had the ability to  
7 exercise those rights and remedies. Whether another  
8 party could, quote-unquote, stop them could depend on  
9 a number of different factors.

**Designation:**

25:10 Q. Okay. Now, I want to also get a level set on your  
11 objectives going into the negotiations, and I  
12 understand that when I say you, I mean the City,  
13 Mr. Buckfire, there are multiple parts --  
14 A. My -- my team --  
15 Q. That's right.  
16 A. -- consultants.

**Designation:**

26: 8 Q. Now, I'd like to ask about your objectives as you go  
9 into the negotiation. Okay?  
10 A. Um-hm.  
11 Q. You understand that when you go into a negotiation  
12 it's important to have an understanding of both the  
13 financial realities that your party is -- is facing as  
14 well as the legal realities that your party's facing,  
15 correct?  
16 A. Yes.  
17 Q. That informs the negotiation, right?  
18 A. In making an informed decision, I would say you want  
19 to have an understanding of those factors.  
20 Q. And you also want to understand what your counterparty  
21 in the negotiation needs and wants are as well as  
22 their potential legal rights, right?  
23 A. What your counterparty negotiations perceived needs  
24 and rights are.  
25 Q. That's right. That's right.  
27: 1 Now, I'm going to ask about the City's  
2 objectives in entering into the negotiations. Okay?  
3 Objective one of the City was to get the  
4 counterparties to waive their cash trap at least on an  
5 interim basis to allow the City access to casino  
6 revenues, correct?  
7 A. I don't know if I would characterize it as objective  
8 one. It wasn't as if we were trying to prioritize one  
9 objective over the other. It was an objective to make

## **Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

10           sure that the cash did not get trapped.  
11   Q.       Okay. So that was one of the objectives.  
12   A.       Yes.  
13   Q.       A second objective was that you wanted to modify the  
14           Swap to get a discount on the termination amount,  
15           correct?  
16   A.       Yes. That was certainly an objective, yes.  
17   Q.       Okay.  
21   Q.       And the third was that you wanted to obtain an option  
22           about when you could direct the termination of the  
23           Swap, correct?  
28: 1   A.       Here again, I understand your characterization. I'm  
2           going to say that that -- that is a fair  
3           characterization without trying to quantify as one  
4           objective is more important than the others, and let  
5           me explain my answer.

**Designation:**

28:25   Q.     And I don't mean to order them, but -- so I won't  
29: 1       focus on it. I just gave you them in an --  
2   A.       Sure.  
3   Q.       -- order.  
4   A.       Right.  
5   Q.       But those were three objectives of your negotiations,  
6           correct?  
7   A.       I think it's fair to say that.  
8   Q.       And you achieved those three objectives in the  
9           forbearance agreement, correct?  
10   A.       We believe so.

**Designation:**

32: 7   Q.     So did Mr. Buckfire have authorization to make a  
8           formal proposal in the first meeting?  
9   A.       Yes.  
10   Q.       And to your knowledge did he make one?  
11   A.       I believe so.  
12   Q.       What was the proposal?  
13   A.       I don't remember what the exact number was, but I  
14           believe the concepts were consistent throughout.

**Designation:**

33: 5   Q.     And do you remember whether they countered?  
6   A.       I don't remember specifically. I believe they may  
7           have.  
8   Q.       Okay. Do you know the terms of their counter?  
9   A.       Generally in the same concept I said. If you're  
10           looking for a number, for instance, we said 50 percent  
11           and they came back with 98. I don't recall those  
12           specifics.  
13   Q.       So you can't give me the bid and the ask --  
14   A.       Yeah.  
15   Q.       -- on what the Swap would be modified as far as the  
16           termination?

# **Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

17 A. Yes, that's correct.

## **Designation:**

33:21 Q. Did the City enter into a nondisclosure agreement in  
22 connection with these negotiations?  
23 A. Yes, I believe so.  
24 Q. With the Swap counterparties?  
25 A. Yes.

## **Designation:**

35:18 Q. Is it fair to say that if I ask you for the specific  
19 ebb and flow of the negotiations between the Swap  
20 counterparties in terms of the precise business  
21 deal --  
22 A. Right.  
23 Q. -- you would have to defer to Mr. Buckfire's  
24 recollection because he was more intimately involved?  
25 A. That's fair. Because Ken was -- Ken would have the  
36: 1 direct meetings and then call me back. We'd go back  
2 and forth, and I didn't keep notes and I didn't keep a  
3 calendar, so --

## **Designation:**

36:20 Q. Mr. Orr, I want to clear something up. Maybe I've  
21 been saying it the wrong way. I've been using the  
22 term "marching orders" with the respect to the way  
23 that you and Mr. Buckfire operated.  
24 A. Right.  
25 Q. And is a better way to say it that you authorized  
37: 1 Mr. Buckfire to negotiate the best possible deal he  
2 could with the Swap counterparties and that's what he  
3 did?  
4 A. That's a fair characterization, sure.  
5 Q. And at some point did he come out of a meeting and  
6 say, Mr. Orr, this is the best deal that I'm able to  
7 get out of these Swap counterparties and it's my  
8 advice that we take it?  
9 A. Yes.  
10 Q. And was that on or about June 11th, 2013, which is the  
11 date he recalls the agreement in principle being  
12 reached?  
13 A. Yes.

## **Designation:**

37:16 Q. And what was the agreement in principle that was  
17 reached as you understood it?  
18 A. The agreement was essentially that in exchange for a  
19 reduced optional termination payment -- we'll just  
20 call it the payment under the forbearance agreement --  
21 the Swap counterparties would agree not to trap the  
22 cash, they would agree to release their liens, and  
23 also release their claims, I believe, against your  
24 client, Syncora, and we would have access to that cash

# **Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

25 going forward provided we made the discounted payment  
38: 1 at some point in the future. I believe at that point  
2 it was in the next 60, 90 days.  
3 Q. Isn't the -- wasn't the agreement in principle that  
4 you'd have an option to direct the termination of the  
5 Swap?

## **Designation:**

38: 8 A. Yeah. I believe the way it works is we would have an  
9 option to request the counterparties exercise their  
10 rights at a discounted level.

## **Designation:**

38:12 Q. And I'm not asking about the forbearance agreement.  
13 I'm asking about the agreement in principle.  
14 A. Yeah, I think those were the general confines of the  
15 agreement in principle.  
16 Q. Okay. Now, you did not invite anyone else to the  
17 negotiations with the Swap counterparties; isn't that  
18 correct?  
19 A. I did not invite anyone else. I don't know if Ken  
20 invited anyone else or anyone else on my behalf  
21 invited anyone else.  
22 Q. And you did not direct anyone such as Mr. Buckfire or  
23 others to invite any other parties into the  
24 negotiation, correct?  
25 A. Correct.  
39: 1 Q. And you did not invite Syncora to participate in these  
2 negotiations, correct?  
3 A. Correct.  
4 Q. And you did not inform Syncora of the existence of  
5 these negotiations, correct?  
6 A. The reason I'm hesitating is at some point clearly  
7 Syncora became aware, so I don't know how they were  
8 informed, but I did not do it, correct.  
9 Q. You didn't do it.  
10 A. Correct.  
11 Q. And you did not invite FGIC to attend these  
12 negotiations, correct?  
13 A. I believe that's correct.  
14 Q. And you didn't direct anyone acting on your behalf to  
15 invite FGIC, correct?  
16 A. Correct.  
17 Q. Nor did you inform FGIC of the existence of these  
18 negotiations, correct?  
19 A. Me personally, no.  
20 Q. You didn't invite U.S. Bank as trustee to the funding  
21 trust or as custodian or contract administrator to  
22 attend any negotiations, correct?  
23 A. Me personally, no.  
24 Q. And you didn't direct anyone else acting on your  
25 behalf to do so, correct?

# **Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

## **Designation:**

40: 1 A. Correct.

## **Designation:**

40:24 Q. At any time prior to June 11th, did the Swap  
25 counterparties send a notice of a default under the  
41: 1 Swap?  
2 A. I don't recall, but I don't think so.  
3 Q. At any time prior to June 11th, did the Swap  
4 counterparties designate an early termination date?  
5 A. I don't recall, but I don't think so.  
6 Q. Did they ever threaten to?  
7 A. They didn't threaten me.  
8 Q. They never threatened you personally.  
9 A. Right.  
10 Q. Did they threaten other people who reported the  
11 threats to you?  
12 A. Not that I know of.  
13 Q. At any time during these negotiations, did the Swap  
14 counterparties designate an optional early  
15 termination?  
16 A. Not that I know of.  
17 Q. Did they ever threaten to do that?  
18 A. Not me.  
19 Q. And did they ever threaten anyone else who reported  
20 the threat to you?  
21 A. Not to my knowledge, no.  
22 Q. At any time during these negotiations, did the Swap  
23 counterparties contend that the City was in breach of  
24 the collateral agreement?  
25 A. Which collateral agreement are you talking about?  
42: 1 Q. The collateral agreement with respect to the casino  
2 revenues.  
3 A. The 2009 agreement?  
4 Q. Yes.  
5 A. Okay. Not that I recall.  
6 Q. In fact, the City was endeavoring to make the monthly  
7 Swap payments into the holdback account throughout  
8 this period, correct?  
9 A. Yes. They were being paid in the ordinary course.  
10 Q. And to the best of your knowledge, the City has  
11 complied with all of its obligations under the  
12 collateral agreement vis-à-vis the Swap  
13 counterparties.  
14 A. No.  
15 Q. That's not correct?  
16 A. No, I mean I think we were -- as I said previously  
17 today, we were in default.  
18 Q. Of the collateral agreement?  
19 A. Right. You mean in terms of making the payments due  
20 under the agreement?  
21 Q. Well, the collateral agreement I know so -- the  
22 collateral agreement and the Swap are -- they are two  
23 different agreements --  
24 A. Yes.

# Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

25 Q. -- that certainly relate to one another.  
43: 1 A. Right.  
2 Q. I'll say that.  
3 A. Okay.  
4 Q. I've talked about events of default under the Swap  
5 that could lead to the big termination payment.  
6 A. Right.  
7 Q. We talked about that earlier, right?  
8 A. Right.  
9 Q. I'm talking specifically now about whether there were  
10 events of default under the collateral agreement. Had  
11 you breached any of the provisions of the collateral  
12 agreement?  
15 A. Yeah. That's why I'm being a little -- a little  
16 careful here. There may be conduct under the Swaps  
17 that could be conceivably a breach under collateral  
18 agreement. I don't know what they are, so I'm being  
19 hesitant. But to get to your question, were we making  
20 the payments due under the Swaps? Yes.  
22 Q. What was -- what was the conduct under the Swap that  
23 might be --  
24 A. I'm not sure.  
25 Q. As you sit here today, are you aware of any breaches  
44: 1 of the collateral agreement by the City?  
4 A. None from my perspective, but there might be. What I  
5 don't want to do is sit here today and try to draw a  
6 conclusion as to what might be a breach of the  
7 collateral agreement vis-a-vis the Swap agreement.  
8 I'm trying to answer your question that we were making  
9 the payments that were due.  
11 Q. Yeah, I appreciate that. I mean, I guess your answer  
12 is there may be breaches of the collateral agreement,  
13 there may not be, you don't know.  
14 A. I don't know, that's right.  
15 Q. Now, this June 11th agreement in principle that we  
16 were talking about earlier --  
17 A. Right.  
18 Q. -- was there a term sheet?  
19 A. No. To the best of my recollection, I did not see a  
20 term sheet at that time.  
21 Q. And just to be clear, do you know whether there was a  
22 term sheet that you just didn't see?  
23 A. Yeah. There might have been a term sheet that I  
24 didn't see. I think Ken and I and some of the other  
25 attorneys at Jones Day, Corinne, David Heiman and  
45: 1 others would have a -- I'm trying to relay to you a  
2 sense that we'd have calls, but sometimes I don't  
3 recall seeing a specific term sheet at that time.

## Designation:

45:18 Q. Do you remember whether there was a term sheet?  
19 A. There eventually was a term sheet. I just don't  
20 remember whether or not it was on June 11th.  
21 Q. That's fine. So do you think it went agreement in  
22 principle, non-binding term sheet, and then

# **Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

23                   negotiation of definitive documents?  
24   A.   Yes.

## **Designation:**

46: 6   Q.   And so at some point you did see a non-binding term  
7                   sheet that embodied the agreement in principle  
8                   Mr. Buckfire had negotiated, correct?  
9   A.   Yes.   Oh, yes.

## **Designation:**

46:18   Q.   And the term sheet was consistent with the agreement  
19                   in principle that we discussed earlier that  
20                   Mr. Buckfire negotiated?  
21   A.   Yes.   It had obviously, as terms do, have more  
22                   information, but it was consistent.  
23   Q.   So between July 11 -- I'm sorry.  
24                   Between June 11th --  
25   A.   Okay.  
47: 1   Q.   -- and July 15th, which is the execution date of the  
2                   forbearance agreement --  
3   A.   Yes.  
4   Q.   -- you pivot from negotiating this agreement in  
5                   principle that Mr. Buckfire has struck to now  
6                   documenting it, correct?  
7   A.   Yes.  
8   Q.   Now, Mr. Buckfire has testified that those -- that  
9                   those negotiations proceeded without interruption from  
10                  June 11th to Ju -- July 15th.   Is that consistent with  
11                  your recollection?  
12   A.   The negotiations continued.   I think there were other  
13                  events related to the agreement, some of them by your  
14                  client in that time frame, but yes, we continued  
15                  negotiating.  
16   Q.   Okay.   And there were no serious interruptions in  
17                  those negotiations, correct?  
18   A.   There was an agreement reached.   I'm going to take  
19                  your time frame, June 11th.   Ken and I had a  
20                  discussion about the amount.   It was somewhere south  
21                  of 25 percent.   I believe in the same second week I  
22                  said we can't do this deal for less than a 25 percent  
23                  discount.   I believe the negotiations broke down, then  
24                  the next day they came back without changing the  
25                  framework of the agreement, just the number changed,  
48: 1                  the discount went up, and then I believe that -- yes,  
2                  I believe negotiations continued continually  
3                  throughout that time.  
4

## **Designation:**

48:17   Q.   Were there any serious interruptions in the  
18                  negotiations between June 11 and July 15?  
19                   MR. SHUMAKER:   Same objection.  
20   A.   You keep saying serious, and to the best of my  
21                  knowledge there were no material or significant  
22                  interruptions.   I don't want to try to characterize

# Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

23 what serious means. I think negotiations continued  
24 unabated.

## Designation:

65:11 Q. During the course of your negotiations back to the  
12 agreement in principle of what became the forbearance  
13 agreement, did you ever solicit the views of any of  
14 the other monoline insurers, such as Ambac or Assured  
15 or National about what they thought the City should  
16 do?  
17 A. Not that I recall.  
18 Q. Did you ever solicit the views of any COP holders  
19 about what they thought the City should do with  
20 respect to the --  
21 A. I didn't solicit their views, no.  
22 Q. Did you direct anyone acting on your behalf to solicit  
23 the views of any of those parties?  
24 A. Not that I recall.  
25 Q. Isn't it true that getting the forbearance agreement  
66: 1 was a life or death issue for the City of Detroit?  
2 A. Yes, getting the forbearance agreement was very  
3 important to the City of Detroit.  
4 Q. Is it a life or death issue?  
6 A. When you say life or death, you know, here again I'm  
7 trying to be responsive, but I want (sic) to  
8 characterize it. The City needs the casino revenue  
9 badly. It was cash poor at that time. It would have  
10 facilitated without access, and it continues to be  
11 relatively cash poor without access. It could have  
12 facilitated a cash crisis. Life or death suggests to  
13 me it was critical and it might have been life or  
14 death, but what it does mean is that we could not have  
15 made the investment and cannot make the investment  
16 that is so crucial for the City.  
18 Q. In fact, isn't it your position that without access to  
19 the casino revenues that people in the City of Detroit  
20 may die?  
21 A. Yes.

## Designation:

71: 3 Q. Given the importance of this issue, I assume that you  
4 had made requests from the State of Michigan to  
5 provide the City with liquidity prior to June 4th;  
6 isn't that correct?  
7 A. Sir, you can assume whatever you want. The reality is  
8 under my contract I have an obligation to report and  
9 coordinate with the State. We had had discussions, I  
10 believe, with the State about potential liquidity, and  
11 we were told that that would be unavailable.  
12 Q. And you conveyed to the State the seriousness of the  
13 City's situation, correct?  
14 A. I don't think I had to convey to the State the  
15 seriousness of the City's situation. I think the  
16 State's well aware.

## Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

17 Q. So the State understood that getting liquidity was a  
18 life or death issue for the City of Detroit, correct?  
21 A. Whatever the State understood, what I'm trying to tell  
22 you is I conveyed to them what our needs are.  
24 Q. You conveyed the extreme seriousness of the situation  
25 to the State, correct?  
72: 1 A. As I said, I don't think I had to convey it to the  
2 State. The State had just been through almost two  
3 years of determining a financial emergency existed.  
4 Q. And the State did not provide the City with any  
5 liquidity prior to June 4th, correct?  
6 A. No.  
7 Q. I am correct that they didn't?  
10 A. You are correct, they did not.

### **Designation:**

72:25 Q. And the City owns a fine art collection; isn't that  
73: 1 correct?  
2 A. The City owns the Detroit Institute of Arts in its  
3 collection.  
4 Q. And did you attempt to value the art collection with  
5 an eye towards selling pieces of the art collection to  
6 relieve the City's life or death liquidity crisis?  
8 A. Prior to June 14th?  
10 Q. Prior to June 11th, which is the date of the agreement  
11 in principle.  
12 A. No. We've entered into an agreement with Sotheby's to  
13 begin that process now, not related to relieving the  
14 liquidity crisis, just as a matter of prudence to  
15 determine the value of assets.  
16 Q. Your expectation is that the -- that the City's art  
17 collection is very valuable; isn't that correct?  
18 A. I've been told that, yes.  
19 Q. Isn't it possible it may be worth billions of dollars?  
20 A. That would be speculation. I've been told it is  
21 valuable.  
22 Q. Could it be worth hundreds of millions of dollars?  
23 A. That would be speculation. I've been told that it's  
24 valuable.  
25 Q. Okay. So as of June 4th, you didn't know whether or  
74: 1 not the City might have billions of dollars of art  
2 sitting in its art institute; is that your testimony?  
3 A. No. My testimony is that I understand it as valuable.  
4 The exact value of it is to be determined.  
5 Q. And you made no effort to sell any of that art prior  
6 to engaging in the negotiations with the Swap  
7 counterparties, correct?  
8 A. No. That's true.  
9 Q. What about federal aid? Did you attempt -- did you  
10 attempt to obtain federal aid prior to the June 4  
11 commencement of negotiations with the Swap  
12 counterparties?  
13 A. I don't know if it was prior to or around that time.  
14 It may have been. We may have sought federal aid  
15 prior to that.

## Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

16 Q. And you conveyed the seriousness of the situation to  
17 whomever you spoke to at the federal government?  
18 A. Yes, I believe the federal government was aware of the  
19 seriousness of the situation.  
20 Q. And the federal government was also unwilling to  
21 provide aid to the City of Detroit; is that your  
22 testimony?  
23 A. Yes, direct aid.  
24 Q. Let me ask you some questions about the service  
25 corporations. The service corporations are two  
75: 1 entities that have long names that I'll only say to  
2 you if you want -- really want me to.  
3 A. We'll stipulate I know what you mean by the service  
4 corporations.  
5 Q. And there are two of them?  
6 A. There are two.  
7 Q. Okay.  
8 A. Police and Fire General Services.  
9 Q. There you go. So you already know them and you said  
10 the names. So the two service corporations are  
11 parties to the forbearance agreement, correct?  
12 A. Yes.  
13 Q. And Mr. Buckfire testified yesterday, I'll represent  
14 to you, that his understanding is that you directed  
15 the service corporations to execute the forbearance  
16 agreement and they did so; is that correct?  
17 A. No.  
18 Q. Okay. Were there arms' length negotiations with the  
19 service corporations?  
20 A. To the best of my knowledge, there was.  
21 Q. And who led those?  
22 A. I'm not quite sure. I know that -- in response to  
23 your question, I did not direct a service corporation.  
24 They were organized by the City. And they are managed  
25 by City employees, but I had no direct -- I gave no  
76: 1 direct instruction to either of the service  
2 corporations.  
3 Q. Okay. So my question was about negotiations with the  
4 service corporations.  
5 A. Right.  
6 Q. Who conducted the arms' length negotiations with the  
7 service corporations on behalf of the City?  
8 A. I'm not sure.  
9 Q. Well, you know it wasn't you?  
10 A. Yes, it wasn't me.  
11 Q. And did you ever direct Mr. Buckfire to engage in  
12 direct negotiations with the service corporations?  
13 A. No. I directed Mr. Buckfire to do whatever needed to  
14 get done to get the agreement in principle resolved  
15 and signed. That's what I did, but I did -- said  
16 nothing specific. Just to be responsive to your  
17 question, said oh, go talk to the service  
18 corporations, there was nothing that specific.  
19 Q. So to the extent there was a negotiation that needed  
20 to be had, it was his job to go have it?  
21 A. It was his or someone else on my -- on my

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22 reorganization team's job, yeah, sure.  
23 Q. Well, did you direct anyone else on your team to go  
24 negotiate with the service corporations?  
25 A. No. Once we reached an agreement in principle, I  
77: 1 directed my team to more or less go forth and get it  
2 documented and get it done.  
3 Q. And the service corporations are legally separate from  
4 the City, correct?  
5 A. Yes, they are.  
6 Q. Your powers as emergency financial manager do not  
7 extend to the service corporations, correct?  
8 A. I haven't examined that question, so I can't answer  
9 you yes or no.  
10 Q. Can you direct their actions under PA 436?  
11 A. I'm not sure.  
12 Q. Do you have any firsthand knowledge that the service  
13 corporations engaged in arms' length negotiations with  
14 the Swap counterparties?  
15 A. No.  
16 Q. If they had, do you think that's something you would  
17 have likely heard about?  
20 A. I may have. As emergency manager, there are a number  
21 of things that occur, as you might imagine, on a daily  
22 basis that I may or may not hear of. I might have.  
24 Q. As you sit here today, though, can you recall hearing  
25 that there were ongoing negotiations between the  
78: 1 service corporations and the Swap counterparties?  
2 A. No.

**Designation:**

78:13 Q. I was just asking whether -- you understand that the  
14 service corporations have service contracts with the  
15 City?  
16 A. Yes.  
17 Q. And you understand that the City has hedge-related  
18 payments that it has to make to the service  
19 corporations --  
20 A. Yes.  
21 Q. -- that they then can use to make to the Swap  
22 counterparties under the Swap?  
23 A. Yes.

**Designation:**

79: 2 Q. Do you understand that the collateral agreement  
3 secures the City's obligation to the service  
4 corporations and the service corporations' obligation  
5 to the Swap counterparties?  
6 A. That's the legal conclusion. It might. That's -- I'm  
7 going to stay away from relaying my understanding  
8 because, frankly, I haven't -- I'm going to be  
9 careful, frankly. It might.  
10 Q. Okay. You don't know as you sit here today?  
11 A. I have an impression of something along those lines,  
12 yes.

# **Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

13 Q. And what is it?  
14 A. That it does -- it may well secure it. It's just that  
15 it's a legal conclusion that I don't want to make.

## **Designation:**

80: 1 Q. Now, if the City's able to perform under the  
2 forbearance agreement and exercises the option, the  
3 effect of this is that the hedge will be terminated,  
4 correct?

## **Designation:**

80: 7 A. I believe there will no longer be a need for the  
8 hedge, yes.

## **Designation:**

80:10 Q. And the collateral agreement will also be terminated  
11 in that event, correct?  
12 A. If we -- if the City performs?  
13 Q. Right.  
14 A. Yes.  
15 Q. And that will free up the casino revenues to be used  
16 by the City, correct?  
17 A. Yes.  
18 Q. Okay. How does that benefit the service corporations?  
19 A. I don't know if it does or doesn't. I know it  
20 benefits the City.  
21 Q. Can you think of a way that it benefits the service  
22 corporations as you sit here today?  
23 A. No. That would be speculation.  
24 Q. And you understand that the service corporations  
25 depend on the City to make the payments of their

## **Designation:**

81: 1 various obligations both under the COPs and the Swap?  
2 A. I believe that's true.  
3 Q. They don't have any independent sources of income?  
4 A. To the best of my knowledge, they do not.  
5 Q. And your view today is that the City of Detroit is  
6 insolvent, correct?  
7 A. Yes, yes.  
8 Q. And fair to assume that by extension the service  
9 corporations are also insolvent, too?

## **Designation:**

81:12 A. I don't know if that's true or not.

## **Designation:**

81:14 Q. Now, isn't it true that the composition of the service  
15 corporations' boards of directors includes three City  
16 officers and at least one City Council member?

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17 A. Yes. I think I said before there are City employees  
18 and City representatives on the boards.  
19 Q. And in fact the person who signed the forbearance  
20 agreement on behalf of the service corporations was  
21 the president of both service corporations, correct?  
22 A. Yes, I believe so.  
23 Q. And her name is Cheryl Johnson, right?  
24 A. Yes.  
25 Q. And she is also the City's finance director, correct?  
82: 1 A. Yes.  
2 Q. Okay. Portia Roberson --  
3 A. Um-hm.  
4 Q. -- is the City's corporation counsel, right?  
5 A. Yes.  
6 Q. And she's also on the board of both service  
7 corporations, correct?  
8 A. To the best of my knowledge, that's true.  
9 Q. Do you know who made the decision at the service  
10 corporations to enter into the forbearance agreement?  
11 A. I do not.  
12 Q. Did you have any conversations with either Ms. Johnson  
13 or Ms. Roberson about the service corporations  
14 entering into the forbearance agreement?  
15 A. No.  
16 Q. Isn't it true that the policy of the City is to  
17 indemnify the service corporation directors for  
18 actions they take in their capacity as City employees?  
19 A. I don't know that.  
20 Q. You don't know if that's the policy of the City?  
21 A. I do not. I know the City has an indemnification  
22 policy. I don't know if it applies to the service  
23 corporations.  
24 Q. Okay, but does it apply to the City employees?  
25 A. It applies to City employees acting within their  
83: 1 course and scope of their employment as employees of  
2 the City.  
3 Q. Okay. So as you sit here today, you can't say that  
4 that indemnification policy would extend to City  
5 employee actions taken in their capacity as service  
6 corporations --  
7 A. Correct.

**Designation:**

83:13 Q. As emergency financial manager, you control the salary  
14 of all City employees; isn't that correct?  
15 A. As emergency manager.  
16 Q. As emergency manager, right.  
17 A. Right.

**Designation:**

84: 3 Q. Okay. And you have the power to reduce those City  
4 employee salaries to zero if you choose, correct?  
5 A. I think I do, yes.  
6 Q. And you have done that on at least one prior occasion,  
7 I believe, correct?

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8 A. Yes, I did do that.

## Designation:

85: 8 Q. Okay. But if I ask you to express the City's view on  
9 the legal merits of the insurers' contention that they  
10 have the right to consent, you'll decline to answer  
11 those questions because it tends to reveal the  
12 attorney-client privilege.

13 MR. SHUMAKER: That's right and also calls  
14 for a legal conclusion, yes.

15 MR. HACKNEY: But you'll -- I want to save  
16 a big string of questions, so if I want to ask him  
17 what are the pros and cons of the argument, who's  
18 likely to win, how will it all come out --

19 BY MR. HACKNEY:

20 Q. You won't answer those questions on the grounds of  
21 the -- because it would tend to reveal attorney-client  
22 advice, correct?

23 MR. SHUMAKER: Well, I don't want to  
24 prevent you from asking any questions and I don't --  
25 but if he has an understanding independent of advice  
86: 1 he's given -- but clearly to the extent it's going to  
2 reveal attorney-client communication, I will tell him  
3 not to answer.

4 MR. HACKNEY: Okay. I'll ask him that.

5 BY MR. HACKNEY:

6 Q. Does the City concur in the insurers' view?  
7 MR. SHUMAKER: Objection, calls for a legal  
8 conclusion and could ask for attorney-client  
9 communications.

10 MR. HACKNEY: Are you instructing him not  
11 to answer?

12 MR. SHUMAKER: To the extent that the  
13 question goes to that, yes.

14 A. Maybe I can help out in this line of questioning.  
15 Any -- I have not acted as an attorney on this job for  
16 the aforementioned reasons, so any opinion that I  
17 would express on behalf of the City in this regard  
18 would be solely as a result of communications with  
19 counsel and discussions.

20 BY MR. HACKNEY:

21 Q. That was my expectation. So if I ask you if the City  
22 concurred, that's going to get into what your lawyer  
23 thinks.

24 A. That's exactly right.

25 Q. So you -- you will assert the privilege.  
87: 1 A. I will assert the privilege.

2 Q. And if I ask you what are the arguments for and  
3 against this point, you'll assert the privilege.

4 A. I will assert the privilege, but I am aware there are  
5 a number of objections that have been filed in the  
6 case that have addressed those issues and none of them  
7 have caused me any surprise.

8 Q. If I said that the City -- if I asked you what the  
9 City's view is on -- well, let me take a step back.

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10                   Do you agree that the insurers can block an  
11                   early termination of the Swap, that this would be  
12                   important to assessing whether the City was in danger  
13                   of owing a termination payment?

14                   MR. SHUMAKER: Objection, calls for a legal  
15                   conclusion.

16           A. Yes, same thing. I'd only have a response to that  
17                   based upon discussions I've had with counsel.

18           BY MR. HACKNEY:

19           Q. Do you agree that the insurers can block a  
20                   termination, that it would make sense to negotiate  
21                   with the insurers to determine whether you can secure  
22                   their agreement not to consent to any termination?

24                   MR. SHUMAKER: Same objection.

25           A. Same response. It would only be based upon  
88: 1                   discussions I've had with counsel.

2           BY MR. HACKNEY:

3           Q. Are you aware that the insurers contend that they have  
4                   the right to control all actions that may be taken by  
5                   the Swap counterparties in connection with the -- with  
6                   the Swaps?

7           A. I am aware of that, yes.

8           Q. When did you first develop that awareness?

9           A. During some course of the correspondence that occurred  
10                   during this time frame that we previously discussed  
11                   today.

12           Q. And have you taken steps to evaluate whether the City  
13                   concurs with the insurers' construction of the  
14                   operative documents on this point?

15           A. Have we taken steps? Yes.

16           Q. Yeah. And what is the City's position?

17                   MR. SHUMAKER: Objection, calls for the  
18                   provision of attorney-client communications, and I  
19                   will instruct him not to answer.

20           BY MR. HACKNEY:

21           Q. Yeah, I'm just going -- I'm making a record here.  
22                   Okay? I don't want to have -- I tried to --

23           A. I'm with you. I'm with you.

24           Q. And if I ask you what the arguments are on both sides  
25                   of this point, you'll also refuse to answer on the  
89: 1                   grounds of the privilege.

2           A. Here again, there are objections in the case that make  
3                   some of those arguments, but I will not specifically  
4                   answer.

5           Q. Because of the privilege.

6           A. Because of the attorney-client privilege and it calls  
7                   for a legal conclusion.

8           Q. And if I ask you who had the better side of the  
9                   argument, you would say the same thing?

10           A. Same thing.

11                   MR. SHUMAKER: Same objection, same  
12                   instruction.

13           A. I would say the same thing. I would say the same  
14                   thing.

15           BY MR. HACKNEY:

16           Q. Do you agree that the insurers can control all actions

## Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

17 of the Swap counterparties in connection with the  
18 Swaps, that this would be important in terms of  
19 assessing whether the City should negotiate with the  
20 insurers?

23 You can answer to the extent you have an  
24 understanding.

25 A. It's also a little speculative because it's a  
90: 1 hypothetical. If then is usually a hypothetical, so I  
2 would -- for the same reasons as we discussed before,  
3 I would say that to the extent it calls for a legal  
4 conclusion, I'll refuse to answer.

5 I would say as a rational person, if you  
6 were put in a corner, then you might want to consider  
7 your alternatives, including negotiations.

9 Q. With the insurers?

10 A. With whoever, yes, whoever's --

11 Q. I mean it's just a simple point. We have five minutes  
12 left. I'm going to milk them.

13 A. Okay.

14 Q. But it's a simple point, which is if the insurers can  
15 potentially direct, like a marionette, the actions of  
16 the Swap counterparties, and I understand --

17 A. Right.

18 Q. -- that you're not agreeing with that --

19 A. Right.

20 Q. -- okay, but if they can --

21 A. Um-hm.

22 Q. -- they're a potential party that you can go negotiate  
23 with to play off against the Swap counterparties,  
24 correct?

91: 2 A. Yeah, here again, I mean if that happened, possibly,  
3 but that's a speculative question, so I'm going stay  
4 away from it.

6 Q. It is speculation, but it's logical --

7 A. As I said in my answer, a rational person would make  
8 that --

9 Q. Yeah.

10 A. If you were put in a corner, you'd have to find some  
11 way out, and negotiation might be one of those  
12 sources, but to the extent your question is also  
13 speculation, I'm going to defer from answering.

14 Q. Do you agree that the insurers are entitled to control  
15 all of the actions of the Swap counterparties; it  
16 raises the risk that the deal negotiated in the  
17 forbearance agreement may be for naught?

20 A. Yeah, here again, maybe not.

22 Q. Those are things you haven't -- you haven't considered  
23 prior to today, fair statement?

24 A. That's a fair statement.

25 Q. Okay. Have you ever heard the phrase "play both ends  
92: 1 against the middle"?

2 A. Oh, have I ever heard the phrase?

3 Q. Yes.

4 A. Yes.

5 Q. You're a bankruptcy lawyer, right?

6 A. Yes.

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7 Q. You were, I should say.  
8 A. I was.  
9 Q. And that's one of the time-honored tricks of  
10 bankruptcy negotiation, right, is to play parties off  
11 against one another to try and get the best deal?  
12 A. I'm not going to call it a trick.  
13 Q. Tools.  
14 A. Tools, tactics. You know, there -- lawyer, as a  
15 negotiator, getting a yes, discussing a number of  
16 different alternatives.  
17 Q. And one of them is playing off both ends against the  
18 middle?  
19 A. Could be. People do that all -- outside of legal  
20 issues, they do that in negotiation.  
21 Q. Isn't it true that prior to July 17 the City never  
22 engaged in substantive negotiations with Syncora?  
23 A. I don't know if that's true. You said July 17th?  
24 Q. Yeah. That's the date of the execution of the  
25 forbearance agreement.  
93: 1 A. Right. I don't know if that's true. I believe there  
2 were discussions that may have been, but you  
3 characterize it as substantive negotiations, so I  
4 don't know if that's true.  
5 Q. You certainly didn't participate in any substantive  
6 negotiations with Syncora, correct?  
7 A. Well, I -- you know, you say negotiations. I know  
8 there were a series of letters going back and forth  
9 and I know that there was a letter -- I just don't  
10 recall when I sent it -- to Mr. LeBlanc that said if  
11 you want to have serious negotiations, then let's have  
12 a discussion, but let's stop sending these letters  
13 back and forth.  
14 Q. But isn't it your position that there were no serious  
15 negotiations with Syncora because Syncora would not  
16 make a proposal?  
17 A. I believe in one of those letters I expressed that  
18 concern, yes.  
19 Q. And to your knowledge Syncora never made a proposal to  
20 the City of Detroit prior to July 17th, correct?  
21 A. Yeah, I believe there was a discussion -- well, there  
22 was discussion about an exchange of NDAs, and Syncora  
23 said they wanted to make a proposal, but they first  
24 wanted to see the proposal from the Swap  
25 counterparties, and I believe in one of my letters to  
94: 1 Mr. LeBlanc, I said well, the parties need to sign a  
2 NDA, and my understanding was Syncora declined to do  
3 that.

**Designation:**

94:17 Q. Mr. Orr, I kind of want to cut through this with  
18 Syncora. I understand that there were letters back  
19 and forth between you and Syncora.  
20 A. Yes.  
21 Q. But I just want to make clear for the record that  
22 there were not substantive negotiations of the type

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23                   that you engaged in with the Swap counterparties with  
24                   Syncora about an alternative proposal to the  
25                   forbearance agreement prior to its execution on  
95: 1               July 17th, correct?  
2       A.           I believe -- July 17th?  
3       Q.           (Nods head).  
4       A.           I believe that's true. As I said, I think there was  
5                   some discussion about a potential offer from Syncora,  
6                   but I believe that got caught up in the NDA issue and  
7                   that went away, so yes, I believe that's true.  
8       Q.           And your recollection in the NDA issue is that the  
9                   City wanted an NDA, but Syncora wouldn't sign it?  
10      A.           My recollection -- no. My recollection was the City  
11                  needed an NDA because we were asking all parties --  
12                  nondisclosure agreement, we were asking all parties to  
13                  sign them. There was some discussion -- I put in a  
14                  letter, I seem to recall, that Syncora sign one, but I  
15                  don't want to speculate or mischaracterize. There  
16                  were some discussion about a NDA before Syncora would  
17                  show us their proposal and something about they wanted  
18                  to see the Swap counterparties' proposal before  
19                  signing an NDA first or something along those lines.  
20      Q.           You're not aware of any situation where the City  
21                  refused to sign an NDA with Syncora, correct?  
22      A.           No, not that I'm aware of.  
23      Q.           In fact, it was the City that wanted an NDA with  
24                  Syncora?  
25      A.           Yes. I believe that's true.  
96: 1      Q.           And it's also true that you did not engage in  
2                  substantive negotiations with FGIC about an  
3                  alternative to the forbearance agreement prior to  
4                  July 17th, correct?  
5       A.           Yeah, with regard to the issue of substantive, I'll --  
6                  I'll, you know, caution that I'm not -- I'm not  
7                  necessarily characterizing, but to the best of my  
8                  knowledge, that's a fair characterization.  
9       Q.           You didn't make a proposal about an alternative to  
10                 FIGC and FIGC didn't make one to you.  
11      A.           Yes, to the best of my knowledge, that's true.  
12      Q.           And that's also true with respect to Syncora, correct?  
13      A.           Yes, that's true.

**Designation:**

97:23    Q.           Okay. It's true, isn't it, that as of the date of the  
24                  execution of the forbearance agreement, your office  
25                  had received multiple calls from Claude LeBlanc at  
98: 1               Syncora, correct?  
2       A.           I'm not aware of that. There may have been multiple  
3                  calls, but I'm not aware -- I received no calls.  
4       Q.           Okay. So you don't -- I take it your secretary --  
5       A.           My office may have. Yeah, my secretary may have, but  
6                  I didn't.  
7       Q.           So you don't know whether he called you or not?  
8       A.           If you're representing to me that he did, I have no  
9                  reason to believe that that's untrue.  
10      Q.           Okay. And I take it you have never called personally

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11           Mr. LeBlanc --  
12   A.       No.  
13   Q.       -- isn't that correct?  
14   A.       No, I don't think so.  
15   Q.       So you didn't return those calls if they were made?  
16   A.       No.  
17   Q.       I just want -- I guess I -- the City has entered into  
18           numerous nondisclosure agreements --  
19   A.       Right.  
20   Q.       -- in these cases, correct?  
21   A.       Yes.  
22   Q.       I mean has it entered into hundreds?  
23   A.       I don't know. I don't -- I don't operate the data  
24           room or any others, but I suspect there's certainly  
25           many.  
99: 1   Q.      We can say that there are lots.  
2   A.       There are lots.  
3   Q.       Okay.  
4   A.       Okay.  
5   Q.       And there's no reason you can think of today that the  
6           City wouldn't enter into one with Syncora.  
7   A.       No.  
8   Q.       Were you aware that Syncora wanted a nondisclosure  
9           agreement so that it could make a proposal that would  
10          be an alternative to the Swap counterparties?  
11   A.       As I said, I believe I have a letter that discusses  
12          the NDA issue, but it was caught up in something  
13          related to Syncora -- as I understood it, Syncora  
14          wanting to see the Swap counterparty proposal first  
15          prior to entering an NDA.  
16   Q.       Did you ever hear that Syncora had gotten over that  
17          issue and was now willing to just make a proposal to  
18          the City?  
19   A.       No.  
20   Q.       So no one ever told you that?  
21   A.       No, I don't recall ever hearing that.  
22   Q.       Okay. Would that have been significant to you if you  
23          heard that?

## Designation:

100: 1   A.    Yeah. Here again, it depends upon what point in time,  
2           if we were already bound by the definitive term sheet  
3           and then -- or the agreement, I believe the  
4           forbearance agreement has an obligation we cooperate  
5           with Swap counterparties, so it wouldn't have mat --  
6           no, it would not have mattered at that time, so it  
7           depends on when that would have occurred.

## Designation:

100:15   Q.    Isn't it true that the City's decision to enter into  
16           the forbearance agreement was made by you, in your  
17           role as emergency manager?  
18   A.       Yes, after consultation with my -- with my employees,  
19           staff and consultants, yes.

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20 Q. And when did you make that decision?  
21 A. To enter into the actual agreement?  
22 Q. Yes.  
23 A. The day I signed it.  
24 Q. July 15th, 2013?  
25 A. I believe so, yes.

## **Designation:**

102: 7 Q. Any legal memoranda from Jones Day that you considered  
8 in making this decision?  
9 A. Yes, probably.  
10 Q. Okay. Written legal memoranda that you reviewed?  
11 A. Yeah, including e-mails. Yeah.  
12 Q. Now, did you take time to familiarize -- to  
13 familiarize yourself with any of the legal documents  
14 relating to the COPs Swap structure in connection with  
15 your decision to execute the forbearance agreement?  
16 A. I relied -- I may have seen them, but I relied upon  
17 consultation with my counsel and investment bankers.  
18 Q. The documents I'm referring to are -- can we agree  
19 they're relatively complicated legal documents?  
20 A. Yeah, I'd say they're not simple documents. It's not  
21 a -- you know, an auto purchase contract, yeah.  
22 Q. Right. So can I fairly characterize that -- that you  
23 may have looked at the documents, but you didn't  
24 attempt to master -- master them in terms of their  
25 legal ins and outs?  
103: 1 A. Yeah. That's a --

## **Designation:**

103: 3 A. That's a fair characterization. As I said, I'm trying  
4 to stay away from acting as an attorney in this job.

## **Designation:**

103: 8 Q. So you relied on your advisors to explain to you how  
9 the COP Swap agreements worked?  
10 A. Yes.  
11 Q. And you also relied on them to explain to you how the  
12 COP Swap agreements worked in conjunction with the  
13 forbearance agreement that you were about to execute?

## **Designation:**

103:15 A. Yes.

## **Designation:**

103:17 Q. So what is the relationship between the forbearance  
18 agreement and the COPs Swap structure?  
19 A. Well, my understanding is that the forbearance  
20 agreement is related to the Swaps structure, but that  
21 the COPs structure is unrelated.

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22 Q. Okay. So the forbearance agreement is part of the  
23 same subject matter as the collateral agreement and  
24 the Swaps agreement, but not the COPs part of the  
25 structure?

104: 1 A. That's my understanding.

2 Q. Okay. In your legal career, have you come across the  
3 concept of the idea that two different contracts can  
4 be part of one integrated transaction?

5 A. Sure. Yes.

6 Q. You're familiar with that as an idea?

7 A. Oh, yeah, sure.

8 Q. Okay. What do you understand that to mean?

**Designation:**

104:10 A. There are a number of ways that two different  
11 documents were -- may refer to the other, as simple as  
12 attachments, exhibits, the master -- the master  
13 service agreement on a loan, for instance. There are  
14 a number of ways that one document can relate to  
15 another as explicitly expressed and intended.

**Designation:**

104:23 Q. You understand the idea that two different contracts  
24 can form part of one larger agreement?

25 A. Oh, sure. Yeah.

105: 1 Q. Is the forbearance agreement part of an integrated  
2 transaction with the amended Swap agreements?

**Designation:**

105: 5 A. Yeah, I'm going to stay away from characterizing it as  
6 an integrated transaction. That may have legal  
7 consequence. I know they are related.

**Designation:**

106:23 Q. So I guess are you saying that you can't reveal  
24 attorney-client communications or are you saying that  
25 you just don't know the answer to this particular  
107: 1 legal question?

2 A. I'm saying I can't reveal attorney-client  
3 communications, and based upon the characterization, I  
4 have formed no independent decision outside of  
5 discussions with my attorney as to whether or not  
6 they're integrated.

**Designation:**

107:24 Q. Isn't it -- I'd like to shift and ask you a question  
25 about the service agreements between the City and the  
108: 1 service corporations.

2 A. Okay.

3 Q. Isn't it true that the City is in default of its  
4 obligations under the service agreements because it

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5                         missed the --  
6 A.                  June 14th payment?  
7 Q.                  That's right.  
8 A.                  We're in default.  
9 Q.                  Okay. And isn't it also true that the City is not  
10                         proposing to cure those defaults in connection with  
11                         the assumption of the forbearance agreement?  
12 A.                  I believe that's true.  
13 Q.                  And you would agree that the City is not going to  
14                         provide assurances that it will perform with the  
15                         service agreements in the future, correct, as part of  
16                         the assumption motion?  
17 A.                  I'm going to be careful here because we're -- we're  
18                         trying to have discussions about what we're going to  
19                         do with regard to the proposal, so I don't want to say  
20                         now something that may or may not occur in the future,  
21                         but there is no present intent -- in response to your  
22                         question, no present intent to do that.  
23 Q.                  You certainly haven't represented that you will as  
24                         part of the assumption motion?  
25 A.                  Yes.  
109: 1 Q.                  We talked about this earlier. I don't want to reask  
2                         the question, but I want to tie it up in connection  
3                         with the assumption motion, which is, there are also  
4                         events of default existing under the Swaps.  
5 A.                  Yes.  
6 Q.                  Those are the cause of all the problems, right?  
7 A.                  Yes.  
8 Q.                  The City is not proposing to cure those defaults in  
9                         connection with the assumption agreement, correct?  
10 A.                  I'm going to be careful with the characterization of a  
11                         cure because, as you know, and -- I have formed no  
12                         independent decision as to whether or not that  
13                         nomenclature's true. What I will say is that pursuant  
14                         to the forbearance agreement we are attempting to  
15                         resolve any and all defaults that may have occurred  
16                         under the collateral agreement.  
17 Q.                  Under -- and I was asking about the Swaps.  
18 A.                  And the Swaps.  
19 Q.                  And the Swaps.  
20                         So the forbearance agreement is an effort  
21                         to resolve any defaults that exist under the  
22                         collateral agreement and amended Swaps?  
23 A.                  Yes.  
24 Q.                  Okay. And in your view it does that?  
25 A.                  Yes.  
110: 1 Q.                  Okay.  
2 A.                  Yes.  
3 Q.                  So I'll say it this way. In your assumption motion,  
4                         isn't it true the City doesn't promise to cure any  
5                         defaults under the collateral agreement or the Swap  
6                         agreement; isn't it that correct?  
7 A.                  Here again, and I'm not trying to be evasive. I  
8                         just -- you know, there are concepts of cure in the  
9                         bankruptcy code, for instance, with regard to the  
10                         assumptions of contracts so on and so forth, and I

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11           want to make sure that I don't testify as to a legal  
12           conclusion. So what I will say is we are trying -- by  
13           the assumption agreement and forbearance agreement, we  
14           are trying to resolve all defaults under those  
15           documents, both the collateral agreement and the  
16           Swaps.  
17       Q.     Okay. And how does it achieve that resolution?  
18       A.     Well, the documents speaks for itself, but generally  
19           speaking, it imposes obligations upon us to perform a  
20           certain ways within certain time frames with regard to  
21           the potential termination payment. It therefore gives  
22           us a discount for that payment. It releases the  
23           casino revenue and imposes obligations, and this is my  
24           language, upon the Swap counterparties not to trap  
25           that revenue upon performance of certain obligations,  
111: 1           in addition, obligates those parties to release liens  
2           and potential claims as a result of the transaction.

## **Designation:**

114:21   Q.     So let me go back. I guess my question is, like, do  
2           you have a view on whether that big time cash trapping  
3           is supposed to happen automatically under the  
4           collateral agreement?  
5       A.     My understanding is that it does not happen  
115: 1           automatically.  
2       Q.     Okay. And is that based on conversations you've had  
3           with counsel?  
4       A.     Yes.  
5       Q.     And if I ask you for the pros and cons of that  
6           argument as to who's likely to win and how the City  
7           came to its view, you would refuse to answer those  
8           questions on the basis of the attorney-client  
9           privilege, correct?  
10      A.     Yes, sir.

## **Designation:**

116: 4   Q.     The discount that you obtained through the  
5           negotiations that Mr. Buckfire led --  
6       A.     Right.  
7       Q.     -- is a discount to the so-called early termination of  
8           the Swap.  
9       A.     Yes.  
10      Q.     Correct?  
11      A.     Yes.  
12      Q.     So if you just read the Swap agreement, it would -- it  
13           implies a termination value, correct?

## **Designation:**

116:17   Q.     It implies an early termination value?  
19      A.     We'll use a nomenclature. It implies a value for  
20           termination fee that I understand represents the loss  
21           expectation of the counterparties.

## **Designation:**

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116:23 Q. That's exactly right.  
24 And the discount you negotiated in the  
25 forbearance agreement is a discount to that amount in  
117: 1 the Swap?

## **Designation:**

117: 4 A. It is a discount to that, yes. It is a discount to  
5 that expected amount.

## **Designation:**

117: 7 Q. Yeah. It is a discount to what would otherwise be  
8 owing under the Swap in the absence of the forbearance  
9 agreement if the Swap counterparties designated an  
10 early termination.  
11 A. I believe that's correct.

## **Designation:**

117:14 Q. Okay. Now, you know that there's a different concept  
15 which is an optional early termination under the Swap,  
16 correct?  
17 A. Um-hm.

## **Designation:**

118: 2 Q. Under the Swap --  
3 A. Right.  
4 Q. -- there is a different type of termination that's  
5 called an optional early termination. Are you aware  
6 of that?  
7 A. I am aware of that.  
8 Q. Okay. That's one where the insured -- the Swap  
9 counterparties contend that they can terminate the  
10 Swap and walk away with no payment.  
11 A. Any understanding I would have about what the Swap  
12 counterparties can do would be based upon  
13 consultations with counsel, but suffice it to say I  
14 have heard of that concept.  
15 Q. Okay. So if I ask you about the pros and cons of that  
16 argument and who would likely to win, you would assert  
17 the attorney-client privilege; is that correct?  
18 MR. SHUMAKER: We would.  
19 A. Yes.

## **Designation:**

118:21 Q. Okay. But I do want to say that you understand that  
22 the Swap counterparties are substantially in the money  
23 under prevailing interest rates, correct?  
24 A. There is a lot of money that the City's going to owe,  
25 yes.

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## **Designation:**

119: 9 Q. Yeah. So what I mean is if the Swap was terminated  
10 today --  
11 A. Right.  
12 Q. -- it's the service corporations that would owe money  
13 to the Swap counterparties, not the Swap  
14 counterparties that would owe money to the service  
15 corporations.

## **Designation:**

119:19 A. Yeah.

## **Designation:**

119:21 Q. That's what I mean by in the money.  
22 A. Yeah, I -- I think that's true.  
23 Q. Okay. I mean that's -- I'm not trying to be flip, but  
24 that is the reason that you negotiated the discount?  
25 A. That's the mechanism, yes. Yeah.  
120: 1 Q. Okay. I want to make an obvious point, which is the  
2 Swap counterparties have never come to the City and  
3 said hey, we're going to exercise that optional early  
4 termination rights that has us walking away and being  
5 paid nothing, correct?

## **Designation:**

120: 8 A. To the best of my knowledge, I've never heard that.

## **Designation:**

120:13 Q. Let me -- if you had heard them threaten that, it  
14 would have made Mr. Buckfire's negotiation a lot  
15 easier.  
16 A. I think it would have made the entire situation a lot  
17 easier, but I've never heard that.  
18 Q. They've never offered to walk away without any  
19 payment.  
20 A. I've never heard them offer to walk away without a  
21 payment.  
22 Q. Okay. Too bad.  
23 A. I'm more than willing to accept that offer.  
24 Q. I was going to say we're all open, right?  
25 A. Right.  
121: 1 Q. I want to go back to the forbearance agreement. We  
2 were talking about the things that it does in terms of  
3 providing access to casino revenues, allowing for an  
4 unwind of the Swap. These were my descriptions of  
5 it --  
6 A. Right.  
7 Q. -- candidly, from your motion --  
8 A. Right.  
9 Q. -- but we were talking generally about these things.  
10 The valuable consideration that the City gets under

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11                   the forbearance agreement are all things that it can  
12                   exercise without any consent from any other party,  
13                   correct?  
17     A.    That's my understanding of the way it works, yeah.  
19     Q.    Do you agree that the effect of the forbearance  
20                   agreement, if the option is exercised, is to modify  
21                   the amount of the termination payment owed under the  
22                   Swaps down to whatever percentage is applicable as of  
23                   that date?  
122: 2     A.    If you're talking about the forbearance agreement and  
3                   the formula that's involved for the percentage change  
4                   depending upon -- as linked to time, as well as the  
5                   requirement that we get approval of the agreement at a  
6                   certain time period, yes, that's true.  
8     Q.    Okay. I mean the effect of the forbearance agreement  
9                   is that instead of owing what the City would owe under  
10                  the Swap, which is the hundred percent of the  
11                  termination value, it now owes -- only owes the  
12                  discounted amount?  
13     A.    Yes.  
14     Q.    So the effect is that it modifies that provision in  
15                  the Swap in a way that's favorable for the City?  
17     A.    That's a fair characterization.  
20     Q.    Now, the forbearance agreement, another part of it,  
21                  that it allows the City to direct the Swap  
22                  counterparties to terminate the Swap, correct?  
123: 4     A.    Yeah, the --  
8     A.    Yeah, the mechanism is such that it's not our  
9                  termination, that it's the parties -- it's the  
10                 counterparties' termination.  
12     Q.    That's right. It's their termination right, but the  
13                 City gets to direct them to exercise it.  
14     A.    Correct.  
15     Q.    Okay. Is that a right that the City currently  
16                 possesses under any of the other agreements to the  
17                 best of your knowledge?  
18     A.    To the best of my knowledge, no.  
19     Q.    That's a right it obtained as a result of the  
20                 forbearance agreement, correct?  
21     A.    Correct.  
22     Q.    And the City's able to exercise that right to direct  
23                 the actions of the Swap counterparties without the  
24                 consent of any third party, correct?  
25     A.    To the best of my knowledge, that's true.

## Designation:

125:14    Q.    Okay. So -- but you -- you can't give me your  
15                 understanding of how Syncora's alleged rights under  
16                 the contract administration agreement interact with  
17                 the City's alleged rights under the forbearance  
18                 agreement.  
19     A.    I can't do that without implicating conversations I've  
20                 had with my counsel.  
21     Q.    And just for the record, you won't?  
22     A.    And I won't.

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23 Q. That's right.  
24 A. And I won't, yes.

## Designation:

126:18 Q. I want to go back to the subject of cash trapping  
19 really quick because we had just moments ago talked  
20 about whether it worked automatically --  
21 A. Right.  
22 Q. -- or whether it worked upon notice.  
23 A. Right.  
24 Q. But prior to the forbearance agreement, it was your  
25 view that the Swap counterparties had the right to  
127: 1 direct U.S. Bank to trap the casino revenues; isn't  
2 that correct?  
3 A. I think if there were events of default, and here they  
4 are, yes.  
5 Q. Yeah. That was a driver of the negotiation --  
6 A. Yes.  
7 Q. -- correct?  
8 A. Certainly is, yes.  
9 Q. And your understanding is that as part of the  
10 forbearance agreement during the -- during the --  
11 during the forbearance period, the Swap counterparties  
12 have temporarily relinquished that right to direct  
13 cash trapping so long as the optional termination  
14 period is pending.  
15 A. Yes, they are forbearing from exercising their right.  
16 Q. Okay. Now, you understand that cash passes through  
17 the general receipts subaccount on a monthly basis.  
18 We talked about that earlier.  
19 A. Right.  
20 Q. It's trapped until a certain point and then the City  
21 makes the holdback account, and when they get --  
22 become equal, there's a discharge of payment to the  
23 City from the general receipts subaccount, and then  
24 for the remainder of the month, the City gets access  
25 to the casino revenues, correct?  
128: 1 A. Yes. My understanding is about \$500,000 a day are  
2 paid into those accounts and the mechanism is very  
3 similar to what you said --  
4 Q. Okay.  
5 A. -- how it operates.  
6 Q. Can we agree that the way the forbearance agreement  
7 works is that certainly between July 17th and now and  
8 from now to whenever the forbearance, the option is  
9 either exercised or expires, there's going to be cash  
10 that passes through this account, already passed  
11 through the account, that goes to the City?  
12 A. Yes. There should be.  
13 Q. If the option expires without the City's exercise of  
14 the option, isn't it true that under the forbearance  
15 agreement, the City has no obligation to put that cash  
16 back into the -- into the general receipts subaccount?  
19 A. I --  
21 Q. Just asking for your understanding of how the

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22 agreement works.  
23 A. Sure. And my understanding of how the agreement  
24 works, without having it in front of me and consulting  
25 counsel, is the parties revert back to the status quo  
129: 1 ante as where they were, and I do not recall that  
2 there's an obligation for remitter (sic) --  
3 Q. Yeah.  
4 A. -- of monies that were paid during the forbearance  
5 period.  
6 Q. And the agreement does speak for itself. I'm just  
7 asking for your understanding of the agreement.  
8 A. That's my understanding.  
9 Q. I have read the agreement, and my reading of  
10 Section 1.2(c) of the agreement is that when the  
11 option expires without being exercised, that it's just  
12 as you said, everyone is restored to the status quo  
13 ante, but the City doesn't have to put the money it  
14 received back in the -- in the interim back into the  
15 account.  
16 A. Right, which is status quo because we would have  
17 received that money in any event.  
18 Q. Okay. But what I just said is also your  
19 understanding?  
20 A. Yes.

## Designation:

130: 8 Q. Let me hand you this forbearance agreement.  
9 A. Okay.  
10 Q. I've marked it as Orr Exhibit 2.  
11 A. Okay.  
12 MARKED FOR IDENTIFICATION:  
13 DEPOSITION EXHIBIT 2  
14 10:48 a.m.  
15 A. Okay.  
16 BY MR. HACKNEY:  
17 Q. Do you have it in front of you?  
18 A. Yes.  
19 Q. And is that, to the best of your knowledge, a true and  
20 accurate copy of the forbearance agreement?  
21 A. Yes, it appears to be.  
22 Q. Now, if you look at the -- on page 2 of the second  
23 full recital?  
24 A. Uh-hm.  
25 Q. You'll see that it says, "Whereas, pursuant to the  
131: 1 terms of each Swap agreement, it is the view of the  
2 Swap counterparties that one or more events of default  
3 and/or additional termination events has occurred,  
4 with the service corporations" -- "with the service  
5 corporation as the defaulting party or sole affected  
6 party, and therefore each of SBS and UBS has the right  
7 to designate an early termination date for the related  
8 Swap agreements."  
9 Do you see that?  
10 A. Yes, I do.  
11 Q. I have a long set of questions here that I would like

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12 to collapse if I could, which is, this just says it's  
13 the view of the Swap counterparties. The fact of the  
14 matter is it's also the City's view that there are  
15 termination events and events of default existing  
16 under the Swap.

17 A. Yes, I think that's fair.

18 Q. And that as a result of those termination and events  
19 of default in the absence of this agreement, the Swap  
20 counterparties would have the right to designate an  
21 early termination date.

22 A. Yes.

23 Q. If I asked you to catalog all of the termination  
24 events and events of default under the Swap, would you  
25 be able to do that?

132: 1 A. No, I wouldn't, not without a consulting client and a  
2 long compendium of events that occurred before I was  
3 appointed.

4 Q. You do know some of them offhand.

5 A. Sure, like the consent agreement, the declaration of  
6 financial emergency, the appointment of the financial  
7 advisory board, the failure to make some of the --  
8 there are a bunch of them, but I couldn't catalog them  
9 all.

10 Q. Yeah. Your appointment?

11 A. My appointment. I'm an event of default.

12 Q. You are -- you are an embodiment of default.

13 A. I'm an embodiment of default.

14 Q. So at some point we will have to cure you.

15 A. You will have to talk to my wife about that.

16 Q. Okay. The -- okay. So that is helpful. I was going  
17 to go through some of these things, but it doesn't  
18 sound like there's an actual dispute between the City  
19 and the Swap counterparties on this point, correct?

20 A. No.

## Designation:

134: 4 Q. Is it fair to say that if I ask you to describe to me  
5 what potential events of default or termination events  
6 where the Swap counterparties were the sole affected  
7 party or the defaulting party --

8 A. Right.

9 Q. -- you would decline to answer those questions on the  
10 basis of the attorney-client privilege?  
11 MR. SHUMAKER: To the extent they would  
12 reveal those communications, of course.  
13 MR. HACKNEY: Well, I mean --

14 A. Yes, I would.

15 BY MR. HACKNEY:

16 Q. Okay. Even if I ask you about your understanding of  
17 the position, your position is that you don't have one  
18 independent of your legal advisors.

19 A. I -- on this question, I don't have one independent of  
20 my legal advisors.

21 Q. So I can't ask you what your understanding is --

22 A. Right.

23 Q. -- because it will necessarily reveal the legal advice

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24 you got.  
25 A. I'm trying to see if there's a way I can answer your  
135: 1 question without implicating discussions. No. It  
2 might -- it might implicate some discussions I had  
3 with counsel.  
4 Q. Okay. Mr. Orr, is the forbearance agreement a  
5 settlement?  
8 A. Let me say this. I'm aware that the motion pending in  
9 front of the Court is both for -- we call in  
10 bankruptcy, what I used to call in bankruptcy, both an  
11 assumption of an agreement and a ^ 9019 settlement.  
13 Q. So it's been held out by the City as a settlement,  
14 correct?  
15 A. Yeah. I think there's a debate as to whether or not  
16 you need to seek settlement approval in a Chapter 9  
17 case, but we are.  
18 Q. Okay. Does the forbearance agreement settle any  
19 claims on a final basis?  
20 A. I think it does.  
21 Q. Isn't it true, though, that if the City doesn't  
22 exercise the option, everyone goes back to the status  
23 quo ante?  
24 A. Yes. That's the contingency, yes.  
25 Q. Okay. So if that were to happen, everyone's claims  
136: 1 would still be in play.  
2 A. I'm going to be careful with the word claims, but  
3 everyone would revert back to the status quo ante.  
4 Q. Okay. So whatever claims they had at the status quo  
5 ante they'd have again?  
6 A. Yeah, whatever claims -- technically, whatever claims,  
7 colloquially, whatever they had would, revert back to  
8 the status quo ante.  
9 Q. Can we agree that in that eventuality no claims of any  
10 of the parties of the forbearance agreement would have  
11 been finally resolved by the forbearance agreement?  
12 A. To the best of my knowledge, yes.  
13 Q. Now, put aside the threat of declaring an early  
14 termination under the Swap --  
15 A. Right.  
16 Q. -- which we've discussed extensively today as a right  
17 the Swap counterparties have under the Swap --  
18 A. Okay.  
19 Q. -- put that aside. Have you evaluated, separate and  
20 apart from that, whether there are other tort or  
21 contract claims that the Swap counterparties may have  
22 against the City?  
23 A. I think there were discussions, but, here again, those  
24 would be wrapped up in attorney-client communications.  
25 Q. So if I asked you to reveal the assessment of whether  
137: 1 there were other claims that the Swap counterparties  
2 have against the City, you would decline to answer  
3 those questions on the grounds of attorney-client  
4 privilege?  
5 A. I think I would have to. I do recall discussions, but  
6 I think I'd have to decline on the basis of  
7 attorney-client privilege.

## Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

8 Q. Have the Swap counterparties threatened to bring any  
9 claims against the City?  
10 A. Well, here again, being careful with the word claims,  
11 you mean unrelated to the defaults such as tort  
12 claims?  
13 Q. I guess I would say the Swap agreement is one you  
14 understand that's between the Swap counterparties and  
15 the service corporations.  
16 A. Right.  
17 Q. Okay. So I'm trying to put that in a box for now.  
18 A. Right.  
19 Q. And we've talked about that extensively.  
20 A. Right.  
21 Q. So other than any claims they may have against the  
22 service corporations --  
23 A. Right.  
24 Q. -- that could absolutely have implications for the  
25 City, but other than that, have the Swap  
138: 1 counterparties threatened to bring any other claims  
2 directly against the City?  
3 A. None that I'm aware of.  
4 Q. I may have asked you this earlier, but I just -- I  
5 want to make sure that I didn't miss it and so if it's  
6 asked and answered I apologize, but did the City  
7 evaluate whether it is in breach of the collateral  
8 agreement?  
9 A. Did we evaluate it?  
10 Q. Yeah.  
11 A. Yes, I and my consultants evaluated it.  
12 Q. Is this one where if I asked you the results of those  
13 evaluations you'd decline to answer?  
14 A. Yes.

### **Designation:**

138:20 Q. Now, have the service corporations threatened to bring  
21 any claims against the City?  
22 A. None that I'm aware of.  
23 Q. And have you undertaken an assessment of the  
24 likelihood of the service corporations to the extent  
25 they were to assert claims against the City?  
139: 1 A. No. I don't recall doing that.  
2 Q. So you haven't assessed that?  
3 A. Not me independently, no.  
4 Q. Okay. And it's not something you took into account as  
5 part of this agreement?  
6 A. No. We -- there was a discussion about the interest  
7 of all the parties. I, independently, did not  
8 handicap whether the service corporations might bring  
9 a claim against the City. I think there were  
10 discussions about it. Many of those discussions would  
11 have been caught up in the general discussions that I  
12 was having with counsel and my other advisors.  
13 Q. And you wouldn't be able to discuss them?  
14 A. No.  
15 Q. But the service corporations' claims against the City,  
16 those are not resolved by the forbearance agreement,

# Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

17                   correct?  
18   A.   If they have any. I don't think they are.  
19   Q.   Let me cut to it. Is it fair to say you haven't given  
20                   this any real consideration?  
21   A.   Yeah. We -- it is fair to say that it was -- there  
22                   was no real deep consideration of it. We did consider  
23                   it.  
24   Q.   Now, as the City evaluated whether it has claims  
25                   against the Swap counterparties --  
140: 1   A.   Um-hm.  
2   Q.   -- okay?  
3   A.   Um-hm.  
4   Q.   And if I ask you to tell me what claims you have, will  
5                   you tell me them or will you assert the privilege?  
6                   MR. SHUMAKER: I would instruct the witness  
7                   that may implicate attorney-client communications.  
8   A.   I would have no independent knowledge of what claims  
9                   may have other than discussions I've had with counsel  
10                  so I wouldn't answer.  
11                  BY MR. HACKNEY:  
12   Q.   Okay. If I ask you what's the likelihood that you'll  
13                  win on the claims?  
14   A.   Same answer.  
15   Q.   You would follow the advice --  
16   A.   Yeah.  
17   Q.   -- and assert the privilege?  
18   A.   Yeah.

## Designation:

140:24   Q.   Well, let me ask you -- let me ask you just a -- sort  
25                  of this is your understanding of the forbearance  
141: 1   A.   agreement.  
2   A.   Right.  
3   Q.   What claims are you asking the Court to approve the  
4                  settlement of?  
5   A.   In claims that might be had by the parties vis-à-vis  
6                  each other.  
7   Q.   So any and all claims that they have under the Swaps  
8                  or the collateral agreement or the service contracts  
9                  or any other contracts --  
10   A.   Yes.  
11   Q.   -- those claims are being resolved by the forbearance  
12                  agreement?  
13   A.   To the best of my knowledge, that is true.  
14   Q.   Okay. And the result of the forbearance agreement is  
15                  that the City will be able to perform under the  
16                  forbearance agreement without being subject to any  
17                  liability to any third party?  
18   A.   That is my understanding.  
19   Q.   And so will the Swap counterparties, correct?  
20   A.   That is my understanding.  
21   Q.   It will give you what I'll call a clean closing?  
22   A.   As I said earlier this week, it will bring us to  
23                  closure and certainty, yes. Earlier today.  
24   Q.   That is also one of the values of this agreement to

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25 both and you the Swap counterparties, you the City?  
142: 1 A. Right.  
2 Q. Which is that it absolves you for any liability in  
3 connection with the relevant agreements?  
6 Q. As a result of performance under the forbearance  
7 agreement, correct?  
10 A. My understanding is that it provides us with closure  
11 and finality regarding any claims and relationships  
12 that the parties have.  
14 Q. Okay. And there's no trailing liability?  
15 A. That is correct.  
16 Q. And just for the record, if I asked to you assess the  
17 likelihood of success of all of the different claims  
18 that are being resolved by the forbearance agreement,  
19 you would assert the attorney-client privilege and  
20 refuse to answer?  
21 A. That is correct. I have made no independent  
22 assessment outside of any conversation I would have  
23 had with counsel and my advisors.

## Designation:

144:10 Q. But I guess I'm saying are you seriously unaware as to  
11 whether there's a release in the forbearance  
12 agreement?  
13 A. Seriously or not, I think the forbearance agreement  
14 resolved all claims between the parties. Sitting here  
15 today without examining it, I'm not aware as to  
16 whether or not it specifically has a release.  
17 Q. Okay. So the -- whether it's in the forbearance  
18 agreement or in the effect of its approval, it  
19 operates as a release for everyone involved?  
20 A. Yeah. The reality is -- when you asked me the  
21 question before as to whether or not it has a release,  
22 the reality is that to the extent you asked -- I  
23 believe in the motion you asked for assumptions and  
24 9019 settlement that the order might well contain a  
25 release so -- I wasn't trying to be truculent with  
145: 1 you. I'm just saying that, yes, the effect of the  
2 approval of the agreement should have that impact.  
3 Q. I'm not going to try to go claim by claim because your  
4 understanding is it releases all claims of the Swap  
5 counterparties, the service corporations, and the City  
6 against one another?  
7 A. Yes.  
8 Q. Now, the Swap insurers, as part of the forbearance  
9 agreement, they get a release of their insurance  
10 obligations under the Swap in the event the City  
11 directs an optional termination, correct?  
12 A. Yes, I believe that's true.  
13 Q. And this was one of the things that the City has  
14 touted, which is to say, hey, Swap insurers, pipe down  
15 this is good for you, right?

## Designation:

145:17 A. Yeah, without characterizing, you know, the colloquial

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18 characterization, yes, we think that's a benefit.

## Designation:

145:20 Q. That's a concept that you've argued in your papers --  
21 A. Yes.  
22 Q. -- as to why the Swap insurers should be happy?  
23 A. Yes.  
24 Q. Now, do you understand you -- you have argued that  
25 this is a benefit to the Swap insurers under the  
146: 1 forbearance agreement, correct?  
2 A. Yes, I believe so.

## Designation:

146:24 Q. Okay. As a layperson person, do you have a view one  
25 way as to whether Syncora is a third party beneficiary  
147: 1 under the agreement?  
2 A. As a layperson, I really haven't examined it.  
3 Q. So don't know one way or the other?  
4 A. Don't know one way or the other.  
5 Q. Do you have a view as to whether Syncora or FGIC, for  
6 that matter, can sue to enforce the agreement?  
7 A. I don't have one way or the other.  
8 Q. They may have, they may not have?  
9 A. Yeah. I'd probably weigh on the side of they don't,  
10 but I -- I don't have a view one way or the other.  
11 Q. And have you considered the possibility that if they  
12 don't have the right to sue to enforce the agreement,  
13 that they also would not have the right to sue to  
14 enforce the release that's in the agreement?

## Designation:

147:16 A. They might or they might --

## Designation:

147:19 A. They might or they might not.

## Designation:

148: 8 Q. And so if the insurer can't enforce the agreement to  
9 take advantage of the release, that's the insurer's  
10 problem, correct?  
11 A. Well, without characterizing whether or not it's their  
12 problem or so, my fiduciary duty runs to the City in  
13 its interest; it does not necessarily run to Syncora.  
14 Q. Yeah. Can we agree that you certainly didn't  
15 negotiate into the agreement any specific provision  
16 granting the insurers the right to sue to enforce that  
17 provision?  
18 A. I made no instruction to my team to negotiate such a  
19 provision.

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## **Designation:**

151: 6 Q. If I ask you about the specifics of the conversations  
7 you had about whether the automatic stay applied and  
8 the likelihood that it would or wouldn't, you'll  
9 decline to answer those questions on the basis of the  
10 attorney-client privilege, correct?  
11 A. Yes, again, today I would have to do that.

## **Designation:**

153:14 Q. Your counsel rendered advice to you about the  
15 likelihood, the pros and cons of the arguments, and  
16 you're not at liberty to provide that advice to us  
17 because it would invade the attorney-client privilege?  
18 A. Yes, I believe that's correct.

## **Designation:**

154:18 Q. If the automatic stay applied, it might get access to  
19 the casino revenue during the whole bankruptcy,  
20 correct?  
21 A. It might.  
22 Q. Yeah. We're talking about different things that you  
23 consider as you're analyzing your options, right?  
24 A. Yeah, correct.  
25 Q. And this is -- this is a potentially important one  
155: 1 because you might be able to get longer access to cash  
2 from the automatic stay than you were getting from the  
3 forbearance agreement, correct?  
4 A. Here again, that's a contingent it might, but that has  
5 to be drawn up also in discussion of potential risk  
6 that Safe Harbor provision would allow the  
7 counterparties to exercise their rights and therefore  
8 obviate any benefits the City could receive from the  
9 automatic stay.

## **Designation:**

155:12 Q. So just to be clear, if I ask you about the specific  
13 ins and outs of all those potential arguments,  
14 likelihoods of success and so forth, you will not  
15 answer those questions on the basis of the  
16 attorney-client privilege, correct?  
17 A. That is correct.  
18 Q. Oh, I know. The City recently argued in court against  
19 yours truly that the automatic stay bars the cash  
20 trapping provisions of the collateral agreement. Are  
21 you aware of that?  
22 A. I believe I am, yes.

## **Designation:**

156: 3 Q. Did the Swap counterparties give their consent to the  
4 City to make those arguments in court?  
5 A. I don't know.

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6 Q. And -- so you don't know whether they did or they  
7 didn't?  
8 A. That is correct.  
9 Q. You understand that as originally designed the Swaps  
10 were designed to hedge against interest rate risk on  
11 the floating COPs?

**Designation:**

156:15 A. That is my understanding.

**Designation:**

156:17 Q. And I can unpack it if you want. I know we get into  
18 the --  
19 A. That's my understanding.  
20 Q. Yeah, okay. Let's just do basics of interest rate  
21 risk, which is if the interest rates go above the  
22 hedge rate, then now the Swap counterparties have to  
23 pay the difference to the service corporations so that  
24 they can pay the difference to the floating rate COPs,  
25 correct?

**Designation:**

157: 2 A. That is my understanding.

**Designation:**

157: 4 Q. That's how the hedge works.  
5 Now, interest rates do not favor the City  
6 in the Swaps -- we asked that earlier.  
7 A. Right.

**Designation:**

157: 9 But more basics of interest rate hedging,  
10 so as the interest rates go up and start to approach  
11 the hedge, the amount the City owes under the Swap via  
12 service corporations goes down?  
13 A. That -- that is my understanding.  
14 Q. And as it crosses over the hedge line, the service  
15 corporation could actually be in the money?

**Designation:**

157:17 A. Yeah, here again, we had the discussion about in the  
18 money or not, but to the extent your point is saying  
19 that they would benefit more from the hedge than the  
20 counterparties would, that is my understanding.

**Designation:**

157:22 Q. When the interest rates get above the hedge line?  
23 A. (Nods head).

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## Designation:

158: 5 Q. When you entered into the forbearance agreement on  
6 July 15th --  
7 A. Right.  
8 Q. -- what steps did you take prior to that time to  
9 evaluate future interest rate moves?  
10 A. Any discussions in those -- that regard would have  
11 been with our investment bankers and generally with  
12 our attorneys. What I'm trying to think of is were  
13 there any discussions that I had with Miller Buckfire  
14 which would not have been confidential in that regard.  
15 I don't think that there were. What I can say is that  
16 we evaluated the potentiality of the -- of the  
17 interest rate fluctuation as indexed to LIBOR going up  
18 or down, but I think most of those, if not all of  
19 them, were in communications with one or more of my  
20 attorneys.  
21 Q. And when you say we evaluated the interest rate  
22 fluctuations, that would have been tasked to Miller  
23 Buckfire to do?  
24 A. Yes, Miller Buckfire in conjunction with folks from  
25 Jones Day. Yeah, sure.  
159: 1 Q. Okay. No disrespect to the fine lawyers at Jones Day.  
2 I don't know if I can calculate future interest rates  
3 as a lawyer.  
4 It was in Miller Buckfire's province to do  
5 it. They may have done it in conjunction with Jones  
6 Day?  
7 A. Yes, yes.  
8 Q. Okay. And any review of forward curves or different  
9 interest rate implications currently existing in the  
10 market would have been done by Miller Buckfire?  
11 A. Yes.  
12 Q. And your recollection is that it was done and it was  
13 something that you considered as part of the decision  
14 entering into this agreement?  
15 A. I believe so.  
16 Q. You're aware, for example, that the Federal Reserve  
17 has indicated intent to scale back its monthly bond  
18 purchases?  
19 A. I heard that.  
20 Q. And --  
21 A. Quantitative reasoning --  
22 Q. Yeah.  
23 A. Yeah.  
24 Q. And you're aware that many people believe that that  
25 may lead interest rates to rise; isn't that right?  
160: 1 A. Yes.  
2 Q. Okay. Did you analyze the likelihood that the  
3 interest rates would rise or was that also tasked to  
4 Miller Buckfire?  
5 A. I didn't do it independently. That would have been  
6 tasked to Miller Buckfire.  
7 Q. And if I asked what that analysis showed, I would have  
8 to ask Mr. Buckfire that?

# Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

9 A. Yes, you would.  
10 Q. Okay.  
11 A. Yes, you would.  
12 Q. Let me ask you about -- in the motion to assume the  
13 forbearance agreement, the City states that it has  
14 examined whether there are viable actions to challenge  
15 the Swap contracts. Do you recall that?  
16 A. Yes.  
17 Q. Under what theory could the City challenge the  
18 validity of the Swap contracts?  
19 A. Any theories that we discussed -- I'll give you two  
20 answers. One, many of the theories, my understanding  
21 is and somebody -- I haven't read all of the  
22 objections, but I've read some of them. Some of the  
23 objections in this case have discussed some of those  
24 theories.  
25 Two, any theories which we would have  
161: 1 examined, either independently or in the context of  
2 reviewing and handicapping the probability of success  
3 of some of the objections, would have been done with  
4 counsel.  
5 Q. And so you'll refuse to describe both the theories and  
6 their likelihood of success because it would invade  
7 the attorney-client privilege; is that correct?  
8 A. Yes. Unfortunately, yes.  
9 Q. If I asked you what likelihood of success the City  
10 attributes to an action seeking to declare the Swaps  
11 invalid, you'll decline to answer that on the  
12 attorney-client privilege?  
13 A. Yes.

## Designation:

161:22 Q. In your proposal for creditors on June 14, 2013, you  
23 said that the City has identified certain issues  
24 related to the validity and/or enforceability of the  
25 COPs --  
162: 1 A. Yes.  
2 Q. -- that may warrant further investigation.  
3 A. Yes.  
4 Q. Do you remember that?  
5 A. Yes.  
6 Q. I'm saving us from having to go through that --  
7 A. Yeah, yeah. No. I remember.  
8 Q. What issues has the City identified?  
9 MR. SHUMAKER: Again, I'm going to caution  
10 the witness --  
11 A. Yeah.  
12 MR. SHUMAKER: -- if this is going to  
13 reveal attorney-client communications to not answer.  
14 Subject to that, you can answer.  
15 A. Here again, there would be no issues that -- and I  
16 hate to keep saying this. There'd be no issues that I  
17 independently would have identified because I'm trying  
18 very hard not to act as a lawyer. I would have only  
19 identified those issues and had discussions of them in

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20           consultations with my attorneys. So whether there are  
21           issues such as void ab initio, fraud, any of the other  
22           issues that typically go to contracts, I would only  
23           have had those discussions with counsel, so  
24           consequently I can't speak to this.

25       BY MR. HACKNEY:

163: 1     Q.    Okay. And you'll assert the attorney-client privilege  
2           as a protection against describing the invalidity of  
3           the COPs analysis?

4     A.    Yes, because I did no independent analysis.

5     Q.    Has the City completed its investigation into this  
6           issue?

7     A.    No. The City's investigation into a number of things  
8           are ongoing.

9     Q.    Okay. And this is one of them?

10    A.   This is one of them, yeah.

11    Q.    Okay. So the City hasn't reached a conclusion on this  
12           subject because it hasn't concluded its investigation  
13           into the subject, correct?

14    A.    It -- I think that's fair, yes.

15    Q.    And has the City considered whether the service  
16           agreements between the service corporations and the  
17           City are lawful?

18    A.    I don't recall if we looked into that.

19    Q.    So that's one that you --

20    A.    I just don't recall if that was one.

21    Q.    You may have investigated, you may have not?

22    A.    Correct. I don't recall that one.

23    Q.    If you have investigated, do you know if the  
24           investigation has concluded or do you not know?

25    A.    No. If we had investigated or are investigating it,  
164: 1       my understanding it would not have been concluded.

2     Q.    Okay. So much like with the COPs, generally the  
3           validity of the service contracts with the City is a  
4           subject of ongoing investigation that has not yet  
5           concluded.

6     A.    It may be the subject of ongoing investigation which  
7           has not yet concluded.

8     Q.    Okay. If I asked you how either of those two  
9           investigations, the one into the COPs validity or the  
10           one into the service contracts validity, impacted your  
11           decision to enter into the forbearance agreement, you  
12           will decline to answer because it would tend to reveal  
13           attorney-client communications?

14    A.    For all the reasons we discussed today, the -- yes, I  
15           would have to.

16    Q.    Mr. Orr, let me ask you about under section 803 of the  
17           service contracts --

18    A.    Yeah.

19    Q.    -- I'm going to save us both from having to go through  
20           them --

21    A.    Yeah.

22    Q.    -- so I'll represent to you what it relates to and see  
23           if you've heard of it.

24    A.    Okay.

25    Q.    Okay?

# Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

165: 1 Under section 803 of the service contracts  
2 payments by the City to the service corporations are  
3 classified according to a waterfall.  
4 A. Um-hm.  
5 Q. Have you heard of this waterfall?  
6 A. Yes.  
7 Q. Okay. Did you evaluate whether there were any claims  
8 that any parties to the structure might have against  
9 one another if the forbearance agreement leads to the  
10 payment of monies outside of the waterfall?  
11 A. I assume you're alluding to prioritization or  
12 subordination in claims along those regards, and the  
13 answer: I think there probably was, but, here again,  
14 I would -- I did not do it independently. It would  
15 have been done by my counsel.  
16 Q. Okay. So you can't tell me the fruits of the analysis  
17 or the City's position on the likelihood of success on  
18 the issue because it's protected by the  
19 attorney-client --  
20 A. That is --  
21 Q. -- privilege?  
22 A. -- correct.  
23 Q. If I ask you how it impacted your decision to enter  
24 into the forbearance agreement, you'd also not be able  
25 to answer that on the basis of the attorney-client  
privilege?  
166: 1 A. That is correct. In addition, that's part of the  
2 deliberative process.  
3 Q. Have you analyzed whether or not COP holders might  
4 have claims against the Swap counterparties if the  
5 City exercises the optional termination right?  
6 A. There -- have we analyzed it? The answer is yes, I  
7 believe so.  
8 Q. Okay. What's the result of that analysis?  
9 A. Here again, any discussion would have been caught up  
10 in discussions I would have had with my counsel in  
11 that regard, so I decline to answer the question.  
12

## Designation:

166:22 Q. We've just been talking now about the COPs. We've  
23 talked about the Swaps a lot. I'm going to for a  
24 moment reference the 2006 COPs Swap transaction  
25 documents.

167: 1 A. Okay.  
2 Q. Do you know generally what I mean when I say that?  
3 A. Yes. The original documents by which the City  
4 borrowed money, 1.4 billion, for the unfunded  
5 actuarial liability --

## Designation:

167: 7 A. For the unfunded actuarial liability involve -- the  
8 organic documents.

## Designation:

# **Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

167:10 Q. That is exactly correct. And, to name a few, there  
11 are the service contracts, the contract administration  
12 agreement, the trust agreement, and the master and --  
13 and amended Swap agreements, correct?  
14 A. Yes.  
15 Q. You've heard of all of those?  
16 A. Yes.  
17 Q. And there are multiple versions of them?  
18 A. There are multiple versions of them.  
19 Q. For example, there are two service contracts --  
20 A. That's right.  
21 Q. -- because there are two service corporations.  
22 A. That's right.  
23 Q. Now, your understanding is that some of these  
24 documents were amended in 2009 in connection with the  
25 addition of the collateral agreement to the package,  
168: 1 correct?  
2 A. Yes. I'm going to take your meaning -- the amendment  
3 to mean that's the -- yes, the net effect of what  
4 happened in 2009.  
5 Q. Okay. Did you know, for example, that the service  
6 contracts were also literally amended --  
7 A. Yes.  
8 Q. -- as part of that?  
9 A. Yes. We're talking generally about all the documents  
10 without specifically going into each one.  
11 Q. Although I did -- I did in that last one.  
12 A. Yeah, you did, and so I'm following your lead on what  
13 we're talking about.  
14 Q. Okay.  
15 A. Okay.  
16 Q. The Swaps were also themselves amended in addition to  
17 the collateral agreement being created?  
18 A. I believe so.

## **Designation:**

169: 2 Q. I believe the City ordinance describes this as all one  
3 transaction.  
4 A. Right.  
5 Q. Do you have a basis to dispute it?

## **Designation:**

169: 8 A. Yeah.

## **Designation:**

169:10 A. Yeah, I have no basis to dispute it. Yeah.

## **Designation:**

169:17 Q. You took a look at them. You know that they all refer  
18 to one other and relate to one another.

# Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

## Designation:

169:22 A. Yeah, if -- without drawing any legal meaning to the  
23 concept that they all refer to one another, I believe  
24 that they do.

## Designation:

170: 1 Q. Now, the forbearance agreement that you just signed on  
2 July 15th, that also references the 2006 transaction  
3 documents, correct?  
4 A. I believe so.  
5 Q. Okay. In fact, doesn't it borrow certain terms from  
6 some of those documents?  
7 A. Without -- yeah, without reviewing the 2005 and 2006  
8 documents or spending time here today reading through  
9 this agreement, I believe that's accurate.

## Designation:

170:15 Q. The -- do you know that one of the things that the  
16 City agreed to do under the forbearance agreement is  
17 that during the optional termination period --  
18 A. Right.  
19 Q. -- the City won't try to seek to invalidate any of the  
20 2006 transaction documents?  
21 A. I believe that's true.  
22 Q. Okay. That's one piece that's big enough that you're  
23 familiar with?  
24 A. Yeah, I believe that's true.  
25 Q. So is it fair to say that the 2006 transaction  
171: 1 documents, the collateral agreement from 2009, and the  
2 forbearance agreement are all documents that relate to the  
3 same subject matter?  
4 A. Without drawing a legal conclusion, I believe in a  
5 broad sense it's fair to say that they relate to the  
6 same subject matter, meaning the Swaps.  
7 Q. Does the forbearance agreement amend any of the  
8 provisions in the 2006 COPs or Swap transaction  
9 documents?

## Designation:

171:12 A. Yeah. I want to be very careful here. In addition to  
13 the document speaks for itself, I don't want to draw a  
14 relationship between the COPs document, which is  
15 separate, to the Swaps document.  
16 When I said they relate broadly to the  
17 subject, to the extent COPs were money borrowed to try  
18 to fund a pension obligation, and the Swaps were in  
19 place as a hedge against the interest rate  
20 fluctuations in those documents, and the collateral  
21 agreement 2009 was a document that was meant to  
22 address defaults that had occurred in relation to the  
23 Swaps document, and this document was meant to address

## **Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

24 the Swaps, they relate to that same subject area, but  
25 I don't want to have my testimony suggest that there's  
172: 1 a legal relationship between the COPs and the Swaps  
2 document as relates to this agreement, forbearance and  
3 optional termination agreement.

## **Designation:**

172: 5 Q. So as you sit here today, is your answer that you  
6 don't know if the forbearance agreement amends any of  
7 the 2006 COPs Swap transaction documents? It may, it  
8 may not, you don't know?  
9 A. That is -- that is correct. I'm not going to draw a  
10 legal conclusion.

**Designation:**

173: 8 Q. Okay. Is it your understanding that the 2006 COPS  
9 Swap transaction documents retain their vitality as  
10 legal agreements to the -- of the parties thereto?  
11 A. It's my understanding that they have whatever vitality  
12 they have according to their terms.  
13 Q. Okay. So all the rights that all the parties to the  
14 COPs Swap transaction documents had before the  
15 forbearance agreement, they still have today?  
16 A. No. Here again, you're -- I just want to be careful.  
17 It seems that you're trying to conflate COPs with  
18 Swaps, and I want to be careful.  
19 Q. Well, I want to say all of them, but if you say no,  
20 it's different on these, some rights have changed, but  
21 on these everyone's rights are preserved, that's okay.  
22 A. Yeah, I want to be careful as far as saying what their  
23 rights are because I do believe those are legal  
24 questions, and in fact some of them are being  
25 litigated in the various piece of litigation that are  
174: 1 going on.  
2 Q. Hence this deposition?  
3 A. Hence this deposition. So I want to be very careful  
4 that I not give any testimony that would implicate a  
5 legal conclusion with regard to those documents.  
6 Q. And I'm not asking for a legal conclusion. I'm just  
7 asking for your understanding as the signatory --  
8 A. Right.  
9 Q. -- as to whether the COPs Swap transaction documents,  
10 whether all the parties preserved their rights under  
11 those documents, notwithstanding the forbearance  
12 agreement, or whether the forbearance agreement  
13 changes the parties' rights under those documents.  
14 A. And that's why I'm being careful because my  
15 understanding of the forbearance agreement is that it  
16 imposed upon the City, service corporations and the  
17 counterparties certain obligations to forebear. I'm  
18 not going to draw a legal conclusion as to whether or  
19 not that amended any rights or changed any rights  
20 under the original documents.  
21 Q. It may have, it may not have?

## Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

22 A. It may. It may have not. I'll leave that to the  
23 attorneys.  
24 Q. It may constitute a waiver, it may not constitute a  
25 waiver, you'll leave that to the attorneys?  
175: 1 A. I'll leave that to the attorneys.  
2 Q. At the time that you entered into the forbearance  
3 agreement, were you aware that the Swap insurers had  
4 the right to consent to waivers, modifications or  
5 amendments of the Swap agreement and the collateral  
6 agreement?  
8 A. I was aware that some of the Swap insurers had  
9 asserted they had those rights. I had drawn no  
10 independent legal conclusion as to whether or not they  
11 did.  
13 Q. Okay. So you didn't know whether they were right or  
14 they were wrong --  
15 A. Correct.  
16 Q. -- at the time you executed the agreement?  
17 A. I had had discussions with my attorneys about whether  
18 they were right or they were wrong, but I had no  
19 independent conclusions.  
20 Q. And you won't disclose the subject of your counsel's  
21 communications?  
22 A. I cannot disclose that subject because that's an  
23 attorney-client communication.  
24 Q. Did you evaluate when you entered into the forbearance  
25 agreement, whether the act of entering into it would  
176: 1 multiply the amount of litigation that the City might  
2 face?  
3 A. I think it's fair to say that we considered whether it  
4 might. Any time you're in a transaction I think you  
5 consider whether it might suborn litigation, yes.  
6 Q. And what were your conclusions on this subject?  
7 A. Here again, any conclusions we would have had would  
8 have been in this whole air of discussions with my  
9 counsel. What I can say, without saying what my  
10 conclusions specifically were of the probability that  
11 it might create additional litigation, is I thought  
12 that overall it was in the best interest of the City  
13 to enter into agreement.  
14 Q. But you won't disclose to me your communications with  
15 your counsel about whether this might multiply the  
16 amount of litigation?  
17 A. That is correct. Multiply, increase, whatever.  
18 Q. And have you -- did you evaluate whether performing  
19 under the forbearance agreement, performing -- and by  
20 that I mean exercising the option.  
21 A. Right.  
22 Q. Whether -- let me say it again.  
23 Have you evaluated whether exercising the  
24 option under the forbearance agreement might subject  
25 the City to additional liability?  
177: 1 A. Here again, all of these issues regarding potential of  
2 contingent claims, additional litigation, the  
3 advisability of entering into the agreement,  
4 considering that we were in litigation, and as I said

## Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

5 before there may have been litigation threats made  
6 additionally, were taken into consideration in  
7 consultation with my counsel.  
8 Q. But you can't disclose those communications?  
9 A. They are attorney-client communications.

**Designation:**

178: 5 Q. Let me hand you what I've marked as Orr Exhibit 4.

**Designation:**

178:10 Q. Do you have Orr Exhibit 4 in front of you, sir?  
11 A. Yes, I do.  
12 Q. So, Mr. Orr, I'll represent to you that this is the  
13 proposed order that your counsel submitted along with  
14 the motion.

**Designation:**

178:17 Q. Do you understand that?  
18 A. Yes. Yes, I do.

**Designation:**

179:20 Do you understand the Swap counterparties  
21 and the City and the service corporations -- there's a  
22 provision in the forbearance agreement that talks  
23 about the fact that you need to get an order  
24 entered --  
25 A. Sixty days.  
180: 1 Q. -- that's mutually agreeable.  
2 A. Yes.  
3 Q. And that was the 60-day time period.  
4 A. Yes.  
5 Q. And we can find the specific provision, but --  
6 A. Yes.  
7 Q. -- you know what I'm talking about.  
8 A. Yes, I do.  
9 Q. Okay. So the form of the order is important.  
10 A. Um-hm.  
11 Q. Is that a yes?  
12 A. Yes.  
13 Q. And it's important because if the order changes  
14 materially, it might arguably give the Swap  
15 counterparties the right to declare an end to the  
16 termination period.

**Designation:**

180:19 A. Here again, without making a legal assessment, I  
20 understand your meaning that we -- we have an  
21 obligation in the City to make sure the order is in a  
22 form that is mutually agreeable to the parties.

# **Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

## **Designation:**

180:24 Q. And this is it, right?  
25 A. That is the proposed order.  
181: 1 Q. And this one, you know, is mutually agreeable to the  
2 parties.  
3 A. I believe that it is, yes.  
4 Q. I mean, you may not have negotiated it --  
5 A. Correct.  
6 Q. -- personally, but it's your expectation that people  
7 acting on your behalf then went to make sure that the  
8 proposed order was mutually agreeable to the Swap  
9 counterparties?  
10 A. That is correct.

## **Designation:**

182:19 Q. Okay. But if the Court enters an order that is not  
20 mutually agreeable to the City and the Swap  
21 counterparties, that could give the Swap  
22 counterparties the right to terminate the optional  
23 forbearance period?

## **Designation:**

183: 1 A. Yes. Here again, it's speculative, in my -- but I  
2 don't anticipate that experience. In my experience  
3 most judges are -- my experience is that many judges  
4 are very careful not to undermine the underlying  
5 agreement by the order that's entered.

## **Designation:**

183: 7 Q. So we can agree, though, that this order is an  
8 important part of the forbearance agreement, correct?  
9 A. Yes. I think the order is relevant to the forbearance  
10 agreement.  
13 Q. And it's important to it?  
15 A. I think it's a -- yes.

## **Designation:**

184:11 Q. Do you know who -- do you know whether anyone  
12 approached the service corporations to get their views  
13 on the order?  
14 A. I do not.  
15 Q. You certainly didn't?  
16 A. No.

## **Designation:**

187:24 Q. Let me ask you about some of them then. Look on the  
25 page 3 at E which is entitled Consent to Use of Casino  
188: 1 Revenues.  
2 A. Um-hm. Um-hm.  
3 Q. And it contains a finding that says, "Pursuant to  
4 section 1.2 of the forbearance agreement, UBS AG and

# **Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

5           MLCS consent to the City's use of the casino revenue  
6           as set forth in the forbearance agreement."  
7           Do you see that?  
8   A. Yes, I do.  
9   Q. And then it says, "The consent of the UBS AG and MLCS  
10          will allow the City immediate access to its casino  
11          revenue as set forth in forbearance agreement and no  
12          other or further consents are required."  
13           Do you see that?  
14   A. Yes, I do.  
15   Q. Okay. Is this an important part of the proposed  
16          order?

**Designation:**

188:18   A. Well, first, the document speaks for itself. Two --

**Designation:**

188:20   Q. It doesn't speak for itself in terms of whether it's  
21          important.  
22   A. Well, let me respond. Two, to the extent this is an  
23          order into a motion, it -- as we had discussed earlier  
24          today, it's important that we have unfettered access  
25          to the casino revenue; and, three, I do think this is  
189: 1       a central aspect of the forbearance agreement.

**Designation:**

189:12   Q. Take a look at paragraph G, arms' length agreement.  
13          The forbearance agreement was negotiated at arms'  
14          length and in good faith by all parties, and it goes  
15          on to say, "UBS AG and MLCS are not insiders of the  
16          City as that term is defined in bankruptcy code  
17          section 101(31)?  
18   A. Um-hm.  
19   Q. And this is the important part I want to you focus on,  
20          "The parties entry into and performance under the  
21          forbearance agreement does not violate any law,  
22          including the bankruptcy code, and does not give rise  
23          to any claim or remedy against the parties thereto  
24          except as may be expressly set forth in this order or  
25          in such agreement."

190: 1       Do you see that?  
2   A. Yes.  
3   Q. Do you remember earlier we talked about whether if the  
4          City performed under the forbearance agreement it  
5          would be able to do so without the fear of liability  
6          to other parties?  
7   A. Yes.  
8   Q. And your understanding was it could do so, correct?  
9   A. Yes.  
10   Q. And that so could the Swap counterparties, correct?  
11   A. Yes.  
12   Q. And isn't this provision one part of the basis for  
13          your -- for that view?  
14   A. Well, you know, as I said, this provision draws a

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15           legal conclusion and I have not independently or as an  
16           attorney done an analysis of what this provision will  
17           provide, but that's my understanding, yes.  
18     Q.     Are you just reading this provision for the first  
19           time?  
20     A.     No. I think I -- as I said, I think I saw the order  
21           attached to the motion. I just didn't recall it  
22           immediately or as terms by itself. I was more  
23           familiar with the motion because I read that in  
24           conjunction with my affidavit that was attached to the  
25           motion, but I think that's the effect of what this  
191: 1       provision does.  
2     Q.     Is this an important part of the order --  
5     Q.     -- from the City's perspective?  
7     A.     Yes, without giving rise to the nomenclature  
8           important. As I said before, it's important that we  
9           have certainty and -- regarding the use of the casino  
10           revenue, and this term certainly looks like it would  
11           provide that.  
13     Q.     Okay. And not only does it provide you the certainty  
14           about the casino revenue, it provides you with the  
15           certainty that you will not be -- the City will not be  
16           subject to any liability as a result of performing  
17           under the forbearance agreement, correct?  
18     A.     Yes, I believe so.  
19     Q.     And it does the same thing for the Swap  
20           counterparties, correct?  
21     A.     Yes, I believe so.  
22     Q.     Take a look at paragraph 4 on the bottom of page 4.  
23     A.     Um-hm.  
24     Q.     It says, "The forbearance agreement is approved in its  
25           entirety. The City is authorized to perform its  
192: 1       obligations that arise from the forbearance agreement  
2           pursuant to Bankruptcy Rule 9019, and any actions  
3           taken heretofore in furtherance of these obligations  
4           are hereby ratified."  
5           Do you see that?  
6     A.     Yes, I do.  
7     Q.     You understand that to be a provision by which the  
8           Court provides a judicial authorization to the City  
9           and the Swap counterparties to perform under the  
10           forbearance agreement, correct?  
15     A.     My understanding --  
17     A.     My understanding is that is the practical effect of  
18           this provision.  
20     Q.     Okay. Is this an important part of this order?  
21           MR. SHUMAKER: Objection to form.  
22     A.     I think approval of the forbearance agreement is an  
23           important part of this order, yes.  
25     Q.     But also the judicial authorization to perform.  
193: 1     A.     Yes, I believe so.  
2     Q.     Let me -- let me cut through some of these provisions,  
3           which is, what the parties really want the Court to do  
4           here, both the City and Swap counterparties, is to  
5           tell them you are allowed to perform this forbearance  
6           agreement without fear of reprisal from any third

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7 party, correct?  
10 A. Yeah, and I also think it calls for a legal  
11 conclusion, but let me see if I can answer the  
12 question. The motion sets forth what I believe are  
13 the conditions necessary for approval of the  
14 forbearance agreement. This order seeks to approve  
15 that motion, so to the extent it does that, yes, I  
16 believe it authorizes the parties to perform and gives  
17 them the authority to go forward to a motion according  
18 to its terms which incorporates by definition the  
19 forbearance agreement, so yeah.  
21 Q. And they can do so without fear of liability to third  
22 parties.  
23 A. You know, that -- that impacts upon -- I believe that  
24 may impact upon the question is not atypical in some  
25 orders as far as -- as we discussed earlier today,  
194: 1 releases, third party liability, exculpation, those  
2 are legal conclusions. My understanding is that the  
3 way the order is -- is worded that, yes, it allows the  
4 parties to go forward.  
5 COURT REPORTER: To --  
6 THE WITNESS: To go forward.  
7 MR. HACKNEY: Without liability to third  
8 parties.  
9 BY MR. HACKNEY:  
10 Q. I think we're going over ground we've gone over  
11 before.  
12 A. Yeah. I believe that's the intent of the order, yes.  
13 Q. Okay. So one of the benefits of the order to the City  
14 and the Swap counterparties is that to the extent  
15 there are third party claims -- and I know you're not  
16 conceding that there are any --  
17 A. Right.  
18 Q. -- it clears them away.  
19 A. I believe that's accurate, which is one of the -- yes.  
20 I believe that's accurate.

## Designation:

197:13 Q. The -- I want to talk about the source of proceeds for  
14 any potential termination payment down the road. This  
15 is a subject I discussed with Mr. Buckfire yesterday.  
16 A. Um-hm.

## Designation:

198:15 Q. And I'm going to give you some notional amounts that  
16 are based on comments your counsel has made in court,  
17 just to try and get general agreement.  
18 A. Sure.

## Designation:

198:19 Q. But it's very possible that the amount of the  
20 termination payment could be between 180 and 220  
21 million dollars?

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## Designation:

198:23 A. I think that's fair. We certainly hope it's on the  
24 lower end or lower of that scale, but that depends  
25 what the rates are at any given day.

## Designation:

199: 2 Q. Okay. Now, let's link up the potential sizeable  
3 termination payment that the City may have to marshall  
4 if it wants to exercise the option with the City's  
5 current financial capabilities.  
6 A. Yes.  
7 Q. Okay. Isn't it true that the City does not currently  
8 have enough cash on hand to be able to fund a  
9 termination payment that was in the range of 200  
10 million dollars?  
11 A. That is true.

## Designation:

199:15 Q. Do you know how much cash the City has today?  
16 A. On any given day, we fluctuate approximately in the  
17 neighborhood of I want to say 30 to 40 million  
18 dollars. Right now that number may be a little bit  
19 higher because we just went through one of our tax  
20 collection periods in August.

## Designation:

200: 3 Q. Do you still project that you're going to run out of  
4 cash by the end of the year?  
5 A. If we don't have this agreement, there's a very real  
6 chance, yes, in a steady state, we will run out of  
7 cash.  
8 Q. And by -- what do you mean by a steady state?  
9 A. If we don't do anything such as secure this casino  
10 revenue, if we don't go to the capital markets and  
11 borrow additional funds, which appears unlikely which  
12 the City has done every other year since 2008 to make  
13 up the difference, yes, the projections show that by  
14 December of this year, we will run out of cash.  
15 Q. Are those the pre-bankruptcy projections?  
16 A. Yes. I believe so.  
17 Q. Those are the projections that we'll get into in a  
18 moment that -- but that assumes that the City's paying  
19 its legacy expenditures on a current basis, right?  
20 A. Yes. As we have -- as we have represented, we intend  
21 to continue doing that throughout the year.

## Designation:

201: 8 Q. So let's go back to sourcing this termination payment.  
9 A. Yes.  
10 Q. It was my understanding of his testimony that

## **Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

11           Mr. Buckfire who, by the way, is the individual tasked  
12           with obtaining the City's post petition financing,  
13           correct?  
14       A.     Yes.  
15       Q.     And is presumably the individual that's most  
16           knowledgeable about that effort?  
17       A.     Yes.  
18       Q.     It was -- I'll represent to you that his testimony was  
19           that the proceeds for the optional termination payment  
20           would likely come from the post -- the proceeds of the  
21           post petition financing?  
22       A.     Yes.

**Designation:**

201:25   Q.   Is that also your understanding?  
202: 1   A.   Yes.

**Designation:**

203:10   Q.   So I do want to talk about -- this is important.  
11           Okay. This is -- isn't it true that one aspect of the  
12           DIP -- I'm not going to get into the others -- is that  
13           the casino revenues will be pledged or anticipated to  
14           be pledged as collateral for the post petition  
15           financing?  
16       A.     Let me say this. That is certainly under  
17           consideration.  
18       Q.     Okay. Now, isn't it also true, though, that the  
19           casino revenues have not currently been freed up on a  
20           permanent basis because the City has not currently  
21           exercised the option, correct?  
22       A.     The certainty that we hope to get out of the  
23           forbearance agreement has not been approved yet,  
24           correct.  
25       Q.     Well, even if it is approved by the Court, you still  
204: 1       won't have exercised the option.  
2       A.     That is true with regard to the optional termination  
3           payment.

**Designation:**

204: 6   Q.   And you need to exercise the option to terminate the  
7           hedge, right?  
8       A.     Yes.

**Designation:**

204:17   Q.   You think it's a fair characterization that you need  
18           to get the hedge terminated to get the collateral  
19           agreement terminated?  
20       A.     Yes.  
21       Q.     And the good part for the City, if those things  
22           happen, is that now you have unchanneled access to the  
23           casino revenues going into the future?  
24       A.     Yes, as we've said today, that certainty is one of the  
25           motivations to enter into the agreement.

## Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

205: 1 Q. But do you also understand that you can't currently  
2 pledge the casino revenues to a post petition lender  
3 in a -- prior to having exercised the option under the  
4 forbearance agreement?  
5 A. Well, let's be careful without drawing legal  
6 conclusions. You can always enter into agreements  
7 that have contingencies attached to them and the  
8 parties will wait for those contingencies to occur.  
9 That certainly has happened with a number of different  
10 negotiations, not just in this case, but happens all  
11 the time.  
12 Q. That's fair that you absolutely -- you make a pledge  
13 that's contingent on something else. But isn't it  
14 true that, as a general matter, post petition lenders  
15 typically like to make sure that they have clean  
16 collateral before they make a loan that's secured by  
17 that collateral?

**Designation:**

205:20 A. I think that's generally a fair characterization;  
21 however, there have been cases that I've been involved  
22 with outside of this one where post petition lenders  
23 have been willing to make pledges or commitments  
24 subject to certain contingencies.

**Designation:**

206: 1 Q. Isn't it your expectation today, though -- is it -- is  
2 it your expectation today that any post petition  
3 lender will want clear -- a clear lien on the casino  
4 revenues before it's willing to lend? Is that your  
5 current expectation?  
6 A. Well, my current expectation is it might well want  
7 clear lien before it's willing to fund. I would think  
8 in many of the bankruptcy cases that I've been  
9 involved in, post petition lenders, for instance, are  
10 willing to make commitments subject to the Court  
11 approving their super priority liens, and then once  
12 that approval is granted, they fund the loan, so  
13 that's fairly common.  
14 Q. I'm going to confirm for the record that conversations  
15 with the State of Michigan about providing DIP  
16 financing or with the federal government about  
17 providing DIP financing are still questions that you  
18 will refuse to answer on the grounds of commercial  
19 sensitivity?

**Designation:**

206:24 Q. Are they commercially sensitive?  
25 A. They are commercially sensitive, but I don't want to  
207: 1 mislead you. It is my assumption that, while they're  
2 commercially sensitive, that's not going to be  
3 forthcoming.  
4 Q. Oh, really?

# Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

5 A. Yes.  
6 Q. So just to tie it up, you tried to get a -- whether  
7 it's credit enhancement or liquidity from the State  
8 and the Feds, and your expectation is that you won't  
9 be able to?  
10 A. My understanding at the State level is that there's  
11 certain prohibitions of the State law on the ability  
12 of the State to lend to the City, and at the Federal  
13 level my understanding is that it's not going to be  
14 forthcoming, direct aid.  
15 Q. Interesting. And what about credit enhancement by the  
16 State?  
17 A. Here again, it's highly commercially insensitive --  
18 sensitive. I don't want to say anything that  
19 forecloses it, but we -- let me answer it this way.  
20 We are operating on the assumption that that will not  
21 come -- be forthcoming.  
22 Q. The casino revenues are about 170 million dollars a  
23 year; isn't that correct?  
24 A. Yeah, 170, 180 somewhere in there.  
25 Q. Yeah. In fact, that -- it's interesting because the  
208: 1 DIP proceeds you're seeking are up to 350; is that  
2 correct?  
3 A. Here again, those are commercially sensitive, but I  
4 think that's fair. Yes, I think that's fair.  
5 Q. Okay. And that's the equivalent of two years' worth  
6 of casino revenues, correct?  
7 A. Yes.

## Designation:

209: 5 Q. The fact of the matter is the DIP process is just  
6 getting off the ground, correct?  
7 A. I think that's fair to say.  
8 Q. I think it's literally in the last couple days, right?  
9 A. I think that's fair.  
10 Q. So you don't know as you sit here today, and you  
11 probably wouldn't tell me if you did --  
12 A. Right.  
13 Q. -- what the current appetite of the lenders is for  
14 uncertainty around the casino revenues, correct?  
15 A. That -- that I think is part of the process. Yeah.  
16 Q. Now, have you attempted to borrow money -- has the  
17 City attempted to borrow money and secure those  
18 borrowings with a lien on something other than the  
19 casino revenues?  
20 A. No.  
21 Q. Is the -- is the City considering pledging art as  
22 collateral?

## Designation:

211: 2 MR. SHUMAKER: I'm going to say that's --  
3 we're drawing a line. We're getting into specifics,  
4 and I'm going to instruct him not to answer.  
5 MR. HACKNEY: I -- okay. That's just all I  
6 need to know for the record.

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## Designation:

211:11 Q. The City does have other revenue streams; isn't that  
12 correct?  
13 A. Yes.  
14 Q. In fact, on an annual basis, the City's revenues are  
15 in the neighborhood of a billion to a billion 1,  
16 correct?  
17 A. Yes, I think that's fair.  
18 Q. And on an annual basis, the casino revenues are in the  
19 range of 170 to 180 million?  
20 A. Yes.  
21 Q. Roughly a little less than 20 percent of the City's  
22 annual revenues.  
23 A. 17 and a half, 18 percent.

## Designation:

211:25 So have you engaged the possibility of  
212: 1 pledging other revenue streams as security for the  
2 DIP?  
3 A. This is a commercially sensitive area. In addition,  
4 there are potentially legal issues that must be  
5 resolved. Suffice it to say we have examined a number  
6 of different possibilities, looking at what options we  
7 might have given the City's various ordinary revenue  
8 streams.  
9 Q. And are there other revenue streams that could be  
10 pledged? I'm not going to ask you whether you are  
11 going to pledge them, whether you will, whether you  
12 plan to, but are there other revenue streams that  
13 could be pledged?  
14 A. There might be. There might be, but there's -- here  
15 again, there's certain legal issues regarding any  
16 revenue streams that have to be resolved.

## Designation:

212:20 Q. So just in terms of level setting --  
21 A. Right.  
22 Q. -- the casino revenues are approximately 15 million a  
23 month.  
24 A. Yes, I think that's fair.  
25 Q. Net of the Swap payment which is still made on a  
213: 1 monthly basis under the forbearance agreement --  
2 A. Yes.  
3 Q. -- you net about 11 million?  
4 A. I think that's correct.  
5 Q. Okay. Your claim is that these revenues are necessary  
6 to the operation of the City. I think we discussed  
7 that earlier.  
8 A. Yes.  
9 Q. And in fact it's your expectation that you will use  
10 these revenues to fund the reinvestment program that  
11 you have planned with respect to the 1.25 billion

## Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

12           dollars of reinvestment in the City over the next ten  
13           years?

14   A. Yes, that's correct. An average of 125 million a year  
15           which a big component of it is this revenue.

16   Q. Okay. So fair statement, you're going to take the  
17           casino revenues and you're going to plow them into the  
18           City, correct?

19   A. More -- I mean, money goes into a bathtub, but yes.  
20           The casino -- we don't have the casino revenue. We  
21           have no other source to make reinvestment in the City.

22   Q. And that's what you want to do?

23   A. Yes.

24   Q. And so as a creditor, I'm going to make the obvious  
25           point that you don't plan to take the casino revenues  
214: 1           and give them to the unsecured creditors, correct?

2   A. I think that's generally a fair characterization.

3   Q. So isn't it fair that other than perhaps certainly  
4           benefitting the people of Detroit if you reinvested in  
5           the City, the creditors themselves will not see their  
6           recoveries enhanced by the fact that the City has  
7           gained access to these casino revenues, correct?

10   A. Yeah, I'm going to be careful here because one of the  
11           things we've offered in our proposal, June 14th  
12           proposal, is a 2 billion dollar note that has some  
13           capacity to fluctuate. Generally speaking, your  
14           statement is true, but there's another concept that  
15           without this reinvestment there's a very real chance  
16           that the City will have no chance to stabilize and  
17           grow and the creditors will see no opportunity for any  
18           benefit because the City would have an inability of --  
19           continue to decline, quality of life will continue to  
20           decline, revenue from other streams will continue to  
21           decline, and the City's ability to satisfy its  
22           obligations to the creditors will continue to decline.

23   Q. Now, I understand that distinction, and we're talking  
24           now about the proposal you've made to creditors that  
25           you would give all of the unsecureds --

215: 1   A. Yes.

2   Q. -- effectively a pot of 2 billion dollars of bonds.

3   A. Correct.

4   Q. And I want to distinguish between two concepts and  
5           make sure that we're on the same page because I think  
6           that we are.

7   A. Right.

8   Q. The first point is that you do agree that you're not  
9           going to take the casino revenues and put it on top of  
10           the 2 billion pot to make a larger recovery for  
11           creditors.

12   A. Yes, that's fair.

13   Q. But you are saying that there could be some value to  
14           the creditors of a revitalized Detroit because that  
15           Detroit will be more able to perform under the  
16           2 billion dollars in bonds that you're going to give  
17           them as part of your proposal?

18   A. That's correct.

19   Q. Okay. Did I summarize accurately the distinction you

# Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

20                   were trying to draw there?  
21   A.   Yes. There's a broader concept about the need  
22                   to revitalize the City and grow beyond just the  
23                   interest of the creditors. It's also for the citizens  
24                   and residents and future of the City.  
25   Q.   Oh, absolutely. I understand that.  
216: 1   A.   But, yes, that's generally -- no direct benefit from  
2                   the casino revenue.

## Designation:

216:15   Q.   I understand that as a general concept, but I meant  
16                   have you undertaken actually any actual analysis of  
17                   the potential Delta 2 creditor recovery?  
18   A.   Oh, from the 120 -- from the casino revenue?  
19   Q.   Right.  
20   A.   Yes, I believe we have.  
21   Q.   And what does it show?  
22   A.   Here again, that's -- it's sensitive and, in addition,  
23                   I believe those discussions were caught up in  
24                   discussions I had with counsel, so I'm going to have  
25                   to decline.  
217: 1   Q.   Those are privileged communications?  
2   A.   I believe so.  
3   Q.   So the analysis of how my client Syncora, as an  
4                   unsecured creditor, would do if the assumption motion  
5                   is denied versus how it will do if its granted, that's  
6                   something that you cannot speak to?  
7   A.   Right, because it goes into the analysis, as we said  
8                   earlier today, what would happen if it were denied,  
9                   what the options would be to the City, what litigation  
10                  risk would happen, what would be caught up in the  
11                  existing litigation, all those issues.  
12   Q.   Let me hand you Orr Exhibit Number 3.

## Designation:

218:24   Q.   Now, you prepared this proposal for creditors that  
25                   I've marked as Orr Exhibit 3 in anticipation of your  
219: 1         June 14, 2013 meeting with creditors, correct?  
2   A.   Yes, I and my team put this together.

## Designation:

221: 2   Q.   So let me draw your attention, if I could, to page 38  
3                   of this report.  
4   A.   Yes.  
5   Q.   Now, this is -- this is titled A Look At the Future in  
6                   the Absence of Restructuring Initiatives. Do you see  
7                   that?  
8   A.   Yes.  
9   Q.   Okay. So what this table is doing is it's saying here  
10                  is where the City of Detroit is headed without any  
11                  increases in expenditures necessary to restore City  
12                  services to adequate levels; without additional  
13                  investments by the City and services assets or  
14                  infrastructure; and, last, without any changes to

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15            legacy liabilities, correct?  
16    A.    Yes, that's correct.  
17    Q.    Now, we're going to talk about each of these three  
18        things in a moment, but the fact of the matter is each  
19        of those three things have changed during the  
20        bankruptcy process in terms of what legacy liabilities  
21        are getting paid or what reinvestments are being made,  
22        correct?  
23    A.    To some degree they have and to some degree they  
24        haven't. We are still in a steady state with, for  
25        instance, salary, overtime, fringe, health benefits,  
222: 1        operating expenses, with regard to secure debt  
2        service, pension contributions which remain  
3        underfunded, health benefits are still in a steady  
4        state. We are hopefully in a steady state on a  
5        revenue side as well.  
6    Q.    I was just making --  
7    A.    But, yes.  
8    Q.    I was making a simpler point, which is, for example --  
9        we'll go into this, but like you're not paying the  
10        service payments related to the COPs during the  
11        bankruptcy?  
12    A.    I believe that's correct.  
13    Q.    Okay. And I think you're deferring pension  
14        contributions.  
15    A.    A portion of the pension contributions. For instance,  
16        this year I think we had an obligation of  
17        approximately 131 million dollars. I think we paid 31  
18        million of it.  
19    Q.    Okay. So a portion.  
20    A.    But that is the steady state. The City regularly  
21        defers pension contributions.  
22    Q.    True, true. We'll get into this in a moment here,  
23        but --  
24    A.    Right.  
25    Q.    -- now, the fiscal year of the City runs from June 30  
223: 1        to June 30, right?  
2    A.    Yeah, July 1 to June 30.  
3    Q.    Right. Yeah. Okay.  
4        And the years that are listed here, it's  
5        your understanding these are the fiscal years,  
6        correct?  
7    A.    2008 to 2012 are fiscal year actuals. 2013 were  
8        preliminary forecasts, at this time forward.  
9    Q.    That's right. This was back in June, so you had a  
10        little -- there was a stub period on June 2013?  
11    A.    Yes.  
12    Q.    When I talked to Mr. Buckfire yesterday, he indicated  
13        that it was his understanding that these years are  
14        July 1, 2013 through June 30, 2014 --  
15    A.    That's correct.  
16    Q.    -- 2014 here?  
17    A.    That is correct.  
18    Q.    Now, the forecast that the City indicates when it  
19        comes to total revenues for the fiscal year that we're  
20        currently in is about 1,082,800,000 in total revenue,

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21                   correct?  
22   A.   That is correct. That's down about 30-some-odd  
23                   million dollars from the prior year.  
24   Q.   Right. And if you look at the operating expenditures,  
25                   that shows that you anticipate 685.7 million in  
224: 1                   operating expenditures during that -- this fiscal year  
2                   that we're currently in, correct?  
3   A.   That is correct.  
4   Q.   Now, if you just viewed these things in isolation, you  
5                   are representing here a net operating surplus of just  
6                   under \$400,000,000, correct?  
7   A.   That's roughly, correct, yes.  
8   Q.   Now, the -- and the operating expenditures are the  
9                   amount of money that you forecast needing to operate  
10                  the City as you found it with its current level of  
11                  services when you were appointed, correct?  
12   A.   That is correct.  
13   Q.   Okay. So that's the point of the caveat at the top,  
14                   which is you have the aim of improving services in the  
15                  City, but when you compiled this expenditures  
16                  analysis, this was based on here is how we currently  
17                  do things in the City of Detroit, providing the level  
18                  of services we currently provide, and here is how much  
19                  it costs?  
20   A.   That is correct.  
21   Q.   Now, isn't it true that -- we've talked about the fact  
22                  that while the casino revenues fluctuate between 170  
23                  and 180 million, even if you took them out of this  
24                  forecast, you would still have a net operating surplus  
25                  of \$227,000,000, correct?  
225: 1   A.   Well --  
2   Q.   Put aside --  
3   A.   Yeah, put aside --  
4   Q.   I understand.  
5   A.   -- debt service and pension contributions, healthcare,  
6                  but just looking at operating expenses, that would be  
7                  correct.  
8   Q.   And -- that's right. I'm emphatically doing that.  
9                  I'm referring to --  
10   A.   Right.  
11   Q.   -- this line. Okay?  
12   A.   Right.  
16   A.   It's in bold. It's the 1, 2, 3, 4th line down.  
18   Q.   And, I mean, can we agree it wasn't an accident that  
19                  whoever compiled this broke the legacy expenditures  
20                  down below the operating expenditures, correct?  
21   A.   Yes. I'm sure that was intentional.  
22   Q.   Right. And that's because, for example, while  
23                  payments to the COPs are likely very important to the  
24                  COP holders --  
25   A.   Right.  
226: 1   Q.   -- they're not something that you actually use to run  
2                  the City.  
3   A.   Well, yes, it's not an operating expense.  
4   Q.   Right.  
5   A.   It's a debt service.

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6 Q. Right.  
7 A payment to a police officer for their  
8 time or for their benefits, that is an operating  
9 expense?  
10 A. Absolutely.  
11 Q. And that's all covered in the operating expenditures.  
12 A. Yeah. Salary over time and fringe benefits, yes.  
13 Q. Okay. So if you follow along in my hypothetical and  
14 we took out what we'll call a hundred -- we'll split  
15 the difference. We'll say it's 175,000,000.  
16 A. Sure.  
17 Q. I'll tell you in here it's projected to be 170 -- why  
18 don't we use the number here. If we took the 170 out,  
19 you'll still have 227.2 million dollars to work with  
20 from the standpoint of a net operating surplus,  
21 correct?  
22 A. Yes, roughly \$230,000,000.

## Designation:

236: 7 Q. I've asked you earlier about selling the art and I  
8 asked you about it as considering it as a potential  
9 backup plan to the negotiations with the Swap  
10 counterparties.  
11 A. Right.  
12 Q. Do you remember that testimony?  
13 A. Yes, I do.  
14 Q. We went back and forth.  
15 A. Yes.  
16 Q. I'd like to bring it forward to the future, to the  
17 present.  
18 A. Yes.  
19 Q. Which is, are you under active consideration now of  
20 using the art to alleviate the liquidity crisis and to  
21 do all of the things that you say you want to do in  
22 this proposal?  
23 A. No. There are no plans to use the art or any other  
24 asset in particular to liquidate it to  
25 relieve liquidity issues in the City. What I have  
237: 1 said when I first took this job, and continue to say,  
2 all options are on the table. We are currently  
3 beginning the process of appraising approximately  
4 3,500 pieces of art in the City of the 66,000 that are  
5 there at the DIA, and once we go through that process,  
6 we will have to decide what, if anything, we need to  
7 do, but I have no plans to use art to relieve the  
8 liquidity crisis that the City is in now.  
9 Q. So let me offer an observation for you to react to,  
10 which is, earlier on when I was asking you questions,  
11 you were telling me about the terrible things  
12 happening in the City, people dying, being shot, the  
13 seriousness of the problems with which you're  
14 grappling.  
15 A. Yes.  
16 Q. You've also identified the assumption motion as  
17 something that needs to be moved along quickly because

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18           of its importance to the issues that we discussed,  
19           right?  
20   A.       Right.  
21   Q.       Why isn't the art equally important to allowing you to  
22           fix Detroit?  
23   A.       I haven't said that it's not important. What I've  
24           said is there are no plans to liquidate it to address  
25           those concerns. I think it is fair to say that there  
238: 1       has been much debate as to the value of art versus  
2           alleviating a number of other concerns, and I've heard  
3           that debate and I've listened to it, but our first  
4           order of business is to assess what we're talking  
5           about and then we'll decide what, if anything, we need  
6           to do.  
7   Q.       Isn't it fair to say that you certainly haven't put  
8           the art time line, in terms of your decision-making  
9           process, you haven't given it the same sort of speed  
10           you've given to the forbearance agreement time line?

**Designation:**

238:12   A.   Yeah. I think it's fair to say that in our proposal I  
13           think we included roughly 15 buckets of assets, and  
14           none of them have been given the same priority that we  
15           deem the forbearance agreement principally because  
16           we're not in default with regard to art. We're in  
17           default with regard to the Swap agreement.  
18   Q.       Well, that was actually going to be my point, which  
19           is, you own the art.  
20   A.       Yes.  
21   Q.       So you don't have to negotiate with anybody in order  
22           to sell it, right?  
23   A.       No, but a prudent thing to do, and we've said this  
24           before, is to find out what we're talking about first,  
25           and that's why we're going through an appraisal  
239: 1       process.  
2   Q.       Just a few more questions and I'll pass the baton.  
3   A.       Sure.  
4   Q.       I take it that when you were appointed as emergency  
5           fin -- emergency manager, you familiarized yourself  
6           with some of the prior negotiations that had gone on  
7           around efforts to resolve the Swap that I believe were  
8           referenced in the 2012 CAFR of the City of Detroit.  
9   A.       Consolidated report, yes.  
10   Q.       You at least made inquiry as to what happened last  
11           year when you tried to work this out.  
12   A.       Yes.  
13   Q.       And it's also your understanding that the potential  
14           right of the Swap counterparties to terminate the Swap  
15           and demand a large termination payment goes back all  
16           the way to March of 2012; isn't that correct?  
17   A.       At least, yes.  
18   Q.       Thinking that's consistent with your report here --  
19   A.       Yes.  
20   Q.       -- you say that.  
21   A.       Yes.

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22 Q. So isn't it true that from March 2012 all the way to  
23 June 4, when Mr. Buckfire went into the negotiating  
24 room for the first time with the Swap counterparties,  
25 during that entire time, the Swap counterparties had  
240: 1 never trapped cash?  
2 A. To the best of my knowledge, that's true.  
3 Q. And they had never declared a termination event?  
4 A. To the best of my knowledge -- to the best of my  
5 knowledge, that's true.

## Designation:

248:12 Q. Let's turn now, Mr. Orr, to the topic of the consent  
13 rights or -- of FGIC and Syncora topic that you were  
14 discussing with Mr. Hackney earlier.  
15 A. Yes.  
16 Q. And actually, let's focus specifically on the  
17 negotiations that the City engaged in with the Swap  
18 counterparties leading up to the execution of the  
19 forbearance agreement.  
20 A. Okay.  
21 Q. And when you were speaking with Mr. Hackney, you  
22 testified that you yourself did not invite either FGIC  
23 or Syncora to those negotiations, correct?  
24 A. Yes. To the best of my knowledge, that's true.  
25 Q. And I believe you said you also didn't suggest to  
249: 1 anyone else that they should invite FGIC or Syncora to  
2 those negotiations, correct?  
3 A. Yes. I believe I testified I did not instruct anybody  
4 to invite them.  
5 Q. To your knowledge, did anyone else suggest inviting  
6 either FGIC or Syncora to the negotiations?  
7 A. As I testified earlier today, there were a series of  
8 letters that were exchanged, and at some point there  
9 was some discussion about Syncora submitting a  
10 proposal. That discussion was wrapped up into whether  
11 or not it would sign a reciprocal nondisclosure  
12 agreement. To the best of my knowledge, that never  
13 happened.  
14 Q. But I think we established that the letter exchanged  
15 with Syncora occurred at some point after June 11th,  
16 when there had been an agreement in principle on the  
17 economic terms of the forbearance agreement; is that  
18 correct?  
19 A. Yes. I believe we -- we testified that June 11th we  
20 reached agreement and principally documented,  
21 June 14th we had the presentation for creditors, and  
22 the letter I saw earlier today I think was dated  
23 June 17th.  
24 Q. That's right. So prior to June 11th, did anyone else  
25 to your knowledge suggest inviting either FGIC or  
250: 1 Syncora to the negotiations?  
2 A. Not to my knowledge, no.  
3 Q. And you mentioned just a minute ago that there had  
4 been some discussion with Syncora or representatives  
5 of Syncora about an alternative proposal to the

# **Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

6 forbearance agreement, and I think you said to  
7 Mr. Hackney that there had been no negotiations with  
8 FGIC about an alternative proposal; is that correct?  
9 MR. SHUMAKER: Objection to form.  
10 A. Yeah, it's a compound question, but I think the way I  
11 would answer it, yes, we would talk about whether or  
12 not someone had been invited. And I think what I said  
13 is to the best of my knowledge I did not invite FGIC  
14 and I did not know if anybody else did.

## **Designation:**

253:21 Q. One of the things you -- one of the things Mr. Hackney  
22 asked you about was if in the course of the  
23 negotiation of the forbearance agreement, you had what  
24 he referred to as a plan B. Do --  
25 A. Right.  
254: 1 Q. -- you recall him asking that question?  
2 A. Yes, I recall that discussion. Yes.  
3 Q. And you responded by saying, without specifically  
4 having a plan B, you had considered alternative to the  
5 forbearance agreement structure, correct?  
6 A. Correct.

## **Designation:**

255: 9 Q. Did you consider capital market alternatives to the  
10 forbearance agreement?  
11 A. We did, but to be perfectly honest with you, the City  
12 had borrowed so much money from the capital markets  
13 without the probability of being able to pay it back  
14 on any reasonable or rational time frame that that  
15 wasn't a serious consideration was taking on more  
16 debt.  
17 Q. Okay. So you didn't really believe that had you a  
18 what we -- what I just described as a capital market  
19 alternative to the forbearance agreement?  
20 A. The City has no -- what I've said at the June 10th --  
21 public meeting on June 14th we were addicted to debt  
22 and we had no ability to take on additional debt.

## **Designation:**

264: 7 Q. Mr. Hackney also asked you some questions about the  
8 service corporations and about whether there were any  
9 negotiations on behalf of the City with the service.  
10 Corporations?  
11 A. Yes.  
12 Q. Okay. I believe you answered that negotiating with  
13 service corporations would not have been your job. It  
14 would have been Ken Buckfire's or someone else's job  
15 to do that.  
16 A. Yes. I believe that's right.  
17 Q. Okay. If it wasn't Ken Buckfire's job, who else's job  
18 would it have been?  
19 A. It might have been someone else on his team or at  
20 Miller Buckfire or someone else on behalf of the other

# Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

21                   counsel for the emergency manager or the City.  
22   Q.            Someone else in your office you mean?  
23   A.            No. No. Other consultants and attorneys on behalf of  
24                   the City.  
25   Q.            Okay. But am I correct that no one has reported to  
265: 1               you that they had negotiations with the service  
2                   corporations; is that correct?  
3   A.            Yeah, reported. I'm going to be careful. My  
4                   understanding was we had an agreement, I signed it,  
5                   and it was sent to the service corporations. I  
6                   personally had no negotiations with them, but my  
7                   understanding, based upon the fact it was executed,  
8                   that whoever needed to procure and secure those  
9                   signatures did so.  
10   Q.            You don't know who got those signatures from the  
11                   service corporations?  
12   A.            No. Sitting here today I do not.

## Designation:

265:15                   Do you -- are you assuming then that there  
16                   were some negotiations between the City and the  
17                   service corporations?  
18   A.            Yeah. Here again, I'm going to say whenever you -- as  
19                   I said to Mr. Hackney, whenever you talk about  
20                   negotiations, you know, so we don't get bogged down in  
21                   nomenclature, I'm assuming that something happened  
22                   that had the service corporations aware of the  
23                   agreement, that they agreed to and they signed off on  
24                   it. So if those constitute negotiations, that's what  
25                   I'm assuming, but I'm saying to you that I had no  
266: 1                   independent negotiations and I don't know who did  
2                   that.  
3   Q.            And you don't have any idea sitting here today about  
4                   what those negotiations would have involved, how they  
5                   happened, when they happened, how long they took,  
6                   anything like that; is that right?  
7   A.            That's right.

## Designation:

271:15   Q.           And how much do you estimate that more federal  
16                   assistance to be?  
17   A.            I have no idea. Whatever -- whatever we can get. If  
18                   it's several millions more, if it's several hundreds  
19                   millions more, we're going to apply for it.  
20   Q.            Do you think it's a possibility it could be hundreds  
21                   of millions more?  
22   A.            Possibility it could be.

## Designation:

271:23   Q.           Earlier in your testimony you were asked a lot of  
24                   questions about legal analyses or legal claims that  
25                   might have been made, and on those questions you  
272: 1                   claimed attorney-client privilege --  
2   A.            Yes.

# **Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

3 Q. -- and said that you didn't have an independent view  
4 that didn't come from attorney-client communications.  
5 A. Yes.

## **Designation:**

278:23 Q. Did you make an independent assessment apart from  
24 advice of counsel as to the strengths -- strengths or  
25 weaknesses of the City's claims against the Swap  
279: 1 counterparties?  
2 A. Not without the advice of counsel, no.

## **Designation:**

284: 3 Q. Did you have any analysis done as to the cost of a  
4 litigation with the Swap counterparties?  
5 A. No. I don't recall if any of the documents included  
6 costs. We -- there were discussions about the  
7 potential costs and the timing, but I don't recall if  
8 any of the documents did.  
9 Q. Okay. What was your best estimate as to how much a  
10 litigation with Swap counterparties would cost the  
11 City?  
12 A. I don't -- I don't remember what the best estimates  
13 were. They -- they ranged from --  
14 MR. SHUMAKER: Object. I just want to make  
15 sure you're not going to be revealing any  
16 attorney-client communications with your answer.  
17 THE WITNESS: Okay.  
18 MR. SHUMAKER: I'll interject that. I'll  
19 let you answer the question as to whether that was  
20 addressed. I don't want you to go --  
21 THE WITNESS: Okay.  
22 MR. SHUMAKER: -- into anything --  
23 THE WITNESS: Okay.  
24 MR. SHUMAKER: -- beyond that.  
25 A. It was addressed, and suffice it to say I think it's  
285: 1 fair to assume that in litigation in the nature you're  
2 discussing that it could go into millions of dollars.

## **Designation:**

285: 4 Q. How about the time it would take to litigate the Swap  
5 counterparties? Did you estimate how long it would  
6 take?

## **Designation:**

285: 8 A. Let's -- let's do it this way. I think it's fair to  
9 say that there were discussions regarding the time for  
10 litigation and/or appeals and the costs that were  
11 involved if that tack was taken.

## **Designation:**

285:13 Q. How long did you estimate it would take to litigate

# Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr

14 with Swap counterparties?  
15 A. I'm not sure the predicate is there that I estimated  
16 the length of time.  
17 Q. Okay. If you didn't estimate the length of time,  
18 that's an okay answer to give.  
19 A. Yeah. I'm trying to be as clear as I can for you and  
20 say that there were discussions, but there's nothing  
21 as specific as the lodestar method of analysis which  
22 you understand is time times hours billed, so on and  
23 so forth. There were discussions and there were  
24 analyses about what it could be.  
25 Q. Now, I have to unpack that a little bit because you  
286: 1 mentioned the lodestar analysis, one of my favorite  
2 friends. Did you have a lodestar analysis done for  
3 litigation with the Swap counterparties?  
4 MR. SHUMAKER: Objection, this is getting  
5 into the -- the specific communications between  
6 Mr. Orr and his counsel when you start to go through  
7 what -- what are the particulars of the advice that  
8 was being given. I allowed you to go forward with  
9 whether he considered the length of litigation in his  
10 answer, but I don't want him to go into the specifics  
11 of any sort of analysis that was done by counsel.  
12 With that admonition, you can answer.  
13 A. Again, without going to the specifics of discussion  
14 I've had with counsel, there were discussions about  
15 potential length of litigation and appeals and the  
16 potential cost. Those discussions included time that  
17 may have impaired my ability to complete my obligation  
18 within the time frame provided by Public Act 436, as  
19 well as significant costs, litigation cost being  
20 incurred by the City.

## Designation:

286:22 Q. Okay. Here is my question again, because in your  
23 answer you mentioned lodestar analysis, so I'm just  
24 asking -- it's a yes or no question.  
25 A. Um-hm.  
287: 1 Q. Did you have a lodestar analysis performed with  
2 respect to a litigation with the Swap counterparties?  
3 MR. SHUMAKER: Again, I'm going to object.  
4 I believe that that question asks the -- asks Mr. Orr  
5 to reveal privileged attorney-client communications  
6 when you get into specific lodestar analysis.

## Designation:

289:11 Q. Do you recall whether you ever discussed with any of  
12 the Swap counterparties the City's potential legal  
13 arguments as against the Swap counterparties?  
14 A. Did I?  
15 Q. Yeah.

## Designation:

## **Objectors' Designations From August 30, 2013 Deposition of Kevyn Orr**

289:18 A. No, I don't think I had though those discussions. No.  
20 Q. Did you ever debate the validity of the Swap  
21 counterparties secured position with anyone from the  
22 Swap counterparties?  
23 A. Did I personally?  
24 Q. Yes.  
25 A. No.

**Designation:**

296: 6 Q. Well, let me ask you this. Has -- based on this  
7 document, the City's plan is to allocate a 2 billion  
8 dollar note to the unsecureds, and this plan is -- it  
9 has a line item for continuing to pay the Swaps?  
10 A. Yes.  
11 Q. Does the 2 billion dollar number change if the Swap  
12 payments change?  
13 A. To the best of my knowledge, no. I don't assume that.

**Exhibit 6B**

**Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire**

# **Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire**

**Designation:**

9: 2 Q. Mr. Buckfire, would you please state your name and  
3 business address for the record?  
4 A. Kenneth Buckfire. 601 Lexington Avenue, New York, New  
5 York.

**Designation:**

11:14 Q. Mr. Buckfire, what is your position with Miller  
15 Buckfire?  
16 A. Co-founder and co-president of Miller  
17 Buckfire & Company.  
18 Q. Miller Buckfire currently is employed as the financial  
19 advisor to the City of Detroit, correct?  
20 A. As the investment banker to the City, that's correct.

**Designation:**

19:22 Q. Now, is it fair to say that you have principal  
23 responsibility for the engagement of the City and the  
24 work that's being performed by the members of your  
25 team?  
20: 1 A. Yes.  
2 Q. And so all the individuals we just discussed report  
3 directly to you, is that correct?  
4 A. Yes.

**Designation:**

21:11 MR. SUMMERS: If we could mark this as  
12 Deposition Exhibit 2, please.

**Designation:**

21:17 Q. Mr. Buckfire, do you recognize this document?  
18 A. I do.  
19 Q. And it is the forbearance and optional termination  
20 agreement that was executed by Mr. Orr among others on  
21 or about July 15th, 2013, is that correct?  
22 A. Yes.  
23 Q. And this is the agreement that's the subject of the  
24 pending motion in the bankruptcy court which brings us  
25 here today, correct?  
22: 1 A. Yes.  
2 Q. Okay. And was the City's decision to enter into the  
3 forbearance agreement made by Mr. Orr?  
4 A. Yes, it was.

**Designation:**

22:13 Q. What role did you have in the negotiation of the  
14 forbearance agreement?  
15 A. On behalf of the City of Detroit I had responsibility  
16 for negotiating the business terms of this agreement.

# **Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire**

## **Designation:**

34: 8 Q. Is it fair -- let's draw down in detail a little bit  
9 on the June 8th meeting. Who was -- what individuals  
10 were present at the June 8th meeting?  
11 A. It was the same attendees as at the June 4th meeting  
12 except that Mr. Saxton and Mr. Martin did not attend.  
13 Q. Were the service corporations present at the June 8th  
14 meeting?  
15 A. Not to my recollection.  
16 Q. Were the service corporations present at the June 4th  
17 meeting?  
18 A. No.  
19 Q. What point was information about the proposed  
20 forbearance agreement communicated to the service  
21 corporations?  
22 A. I don't know.  
23 Q. Do you know who was communicating with the service  
24 corporations?  
25 A. No.  
35: 1 Q. Was anybody communicating with the service  
2 corporations?  
3 A. I don't know.  
4 Q. Did Mr. Orr know?

## **Designation:**

35: 6 A. I don't know.

## **Designation:**

35: 8 Q. But you never spoke with a representative of a service  
9 corporation about the forbearance agreement?

## **Designation:**

35:11 A. I already testified to that.

## **Designation:**

35:25 Q. Did the Swap counterparties ever say to the City that  
36: 1 if a resolution is not reached by a certain date, they  
2 will terminate?  
3 A. Not to my knowledge.  
4 Q. And you said that the first defaults occurred in your  
5 view in March 2012, is that correct?  
6 A. There was a credit rating downgrade which triggered  
7 termination event under the collateral agreement which  
8 had not been cured, and then after that the City  
9 emergency manager was appointed, that in itself was an  
10 event of default under the agreement. So, we had  
11 several defaults.

# **Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire**

## **Designation:**

40: 2 Q. Mr. Buckfire, the forbearance agreement in the City's  
3 view allows the City to direct the termination of the  
4 Swap agreements, is that correct?  
8 A. Well, we negotiated for the right to do so if we can  
9 deliver the Swap termination payment.  
10 Q. Is that a right that the City currently possesses  
11 under any other agreement?  
12 A. This is the only agreement of which I'm aware.  
13 Q. And it is the City's view that under the forbearance  
14 agreement the City is able to direct the termination  
15 of the Swap agreements without the consent of any  
16 other party, is that correct?  
21 A. Can you repeat your question?  
22 Q. Sure. Under the forbearance agreement the City is  
23 able to direct the termination of the Swap agreements  
24 without the consent of any other party, is that  
25 correct?

## **Designation:**

41: 3 A. I don't know what I'm supposed to answer to. It's our  
4 view that this is an agreement the City can perform it  
5 has rights under.

## **Designation:**

44: 6 Q. This document has been marked as Exhibit Number 3 is  
7 the proposal to creditors, executive summary of the  
8 proposal to creditors that was made on June 14th,  
9 2013, is that correct?  
10 A. Yes.  
11 Q. And this was prepared in connection with a meeting  
12 with creditors that was held at the Detroit Airport  
13 Westin on June 14th, 2013, is that correct?  
14 A. That's correct.  
15 Q. And did you participate in creating this executive  
16 summary?  
17 A. I did.  
18 Q. And you participated in the information that is --  
19 gathering the information that is disclosed in this  
20 executive summary, is that right?  
21 A. Well, I reviewed drafts of it to make sure that it  
22 made sense, that it was consistent, that it was  
23 accurate, but I did not prepare the information  
24 myself.  
25 Q. You prepared -- leave it there. You're familiar with  
45: 1 the contents of this document, correct?  
2 A. Yes.  
3 Q. If you turn to Page 35. And Page 35 contains a  
4 summary of the current financial status of the City as  
5 of June 14th, 2013, is that correct?  
6 A. No, actually this is just one way of looking at it.  
7 Page 8 and 9 are actually more relevant for the  
8 discussion we've been having today.  
9 Q. If you stay with -- what then do you think is

## Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

10 contained on Page 35?

11 A. This is a review of the City's reported historical

12 financials.

13 Q. If you look at the column at the very far right side

14 of the page it says prelim 2013. Do you know what

15 that column contains?

16 A. It contains a preliminary estimate of revenues,

17 operating expenses and legacy expenses for 2013.

18 Q. And if you look down here line labeled total revenues

19 which indicates 1.121.9 billion dollars, is that

20 correct?

21 A. Yes.

22 Q. And that is the total revenue that was projected as of

23 the date this executive summary was prepared for 2013?

24 A. Yes.

25 Q. Now, if you go down the next subsection of Page 35 is

46: 1 labeled operating expenditures, correct?

2 A. Yes.

3 Q. And operating expenditures preliminary 2013 column

4 indicates 692 million dollars, correct?

5 A. Yes.

6 Q. Now -- and the operating expenditures include --

7 included in this section include the essential

8 services that the City has to provide, is that

9 correct?

10 A. Yes.

11 Q. And then when you get to the legacy expenditures, is

12 it correct that the City is not currently making debt

13 payment, debt service payments to general obligation

14 bonds, is that correct?

15 A. Yes.

16 Q. And the City is not -- is currently deferring payments

17 for retiree health benefits, isn't that correct?

18 A. Yes.

19 Q. So, without making service or making payments on the

20 legacy expenditures for 2013, is it correct to say

21 that the City would have operated at a surplus for

22 fiscal year 2013?

23 A. Well, clearly if we're not making our fixed

24 obligations, we'd have more cash than if we did.

25 Q. And are you currently making payments on any of the

47: 1 items that are categorized under the legacy

2 expenditures part of Page 35?

3 A. Yes.

4 Q. What portions are you making?

5 A. Well, we're making payments on the POC Swaps because

6 they are a secured obligation. I'm not sure looking

7 at this whether the 141 million of debt service for

8 LTGO and UTGO incorporates payments made on the

9 secured state revenue share bonds which we have three

10 series. I have to go back and check, but clearly the

11 City is paying its obligations on secured, that is,

12 revenue protected debt and not paying on unsecured

13 debt.

14 Q. And the City is not at this point making its pension

15 contributions, correct?

## Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

16 A. Correct.  
17 Q. The City at this point is not paying the health  
18 benefits for retirees, correct?  
19 A. Yes, that's correct.  
20 Q. And the City is not making principal interest payments  
21 to the service corporations, correct?  
22 A. That's correct.  
23 Q. Then turn to Page 38 of the executive summary. In  
24 this document among other things or this page among  
25 other things contains a preliminary forecast for  
48: 1 fiscal -- for the City for fiscal year 2014, is that  
2 correct?  
3 A. Yes.  
4 Q. And you see the column that's labeled 2014?  
5 A. I do.  
6 Q. The column labeled for 2014 indicates the total  
7 revenues for the City for 2014 are projected to be 1  
8 billion 108 -- so, it's 1 billion 82 million point 8,  
9 is that correct?  
10 A. Yes, a decline from 2013.  
11 Q. And expenditures, the expenditures column indicates  
12 that expenditures that the City will incur for  
13 essential services will total 397.2 million dollars  
14 for 2014, is that correct?  
15 A. That's the projected net operating surplus, correct.  
16 Q. Yeah, I'm sorry, it's 685.7 million in expenditures  
17 for fiscal year 2014, correct?  
18 A. Yes.  
19 Q. And that results in a surplus of 397.2 million  
20 dollars, correct?  
21 A. Before debt service.  
22 Q. Before debt service. But you're not making -- the  
23 City is not making a significant portion of the debt  
24 service, correct, in 2014?  
25 A. That's correct.  
49: 1 Q. So, for example, the City does not actually project  
2 paying pension -- making pension contributions for  
3 fiscal year 2014, isn't that true?  
7 A. That's correct.  
8 Q. And the City does not currently plan to pay the health  
9 benefits for retirees in fiscal year 2014, correct?  
13 A. Can you repeat the question, please?  
14 Q. The City does not currently intend to pay the line  
15 item for health benefits for retirees in fiscal year  
16 2014?  
17 A. That's correct.

**Designation:**

53:15 Q. So, do you believe that the City would be out of cash  
16 without access to the casino revenues?  
19 Q. As of December 2013?  
20 A. If nothing else was done, yes.

# Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

## Designation:

54: 5 Q. Now, you've previously discussed the Swap  
6 counterparties entered the negotiations with the view  
7 that events of default had occurred under the Swap  
8 contracts, correct?  
9 A. It was a fact.  
10 Q. And so the City had the same view that there were  
11 events of default that had occurred under the Swap  
12 contracts prior to the bankruptcy?  
13 A. It wasn't a view, it was a fact. We had at least two  
14 defaults.  
15 Q. And can you tell us what the two defaults were?  
16 A. The ratings downgrade default which had occurred in  
17 2012 and the appointment of the emergency manager in I  
18 believe it was March of 2013.  
19 Q. And were there any other defaults other than those two  
20 in the City's view?  
21 A. There may well have been but those are the two that I  
22 recollect.  
23

## Designation:

55:15 Q. To your knowledge had the Swap counterparties ever  
16 threatened to bring litigation claims against the  
17 City?  
18 A. No.  
19 Q. Has the City considered whether the Swap  
20 counterparties have claims against the City other than  
21 those arising out of the defaults under the Swap  
22 agreements?  
23 A. I don't know.  
56: 1 Q. Has the City evaluated whether it is in breach of the  
2 collateral agreement?  
10 Q. In your view have you engaged in any analysis of  
11 whether the City has breached the collateral  
12 agreement?  
13 A. No.  
14 Q. To your knowledge has anyone else associated with the  
15 City analyzed whether the City is in breach of the  
16 collateral agreement?  
17 A. I don't know.  
22 Q. Have the service corporations ever threatened to your  
23 knowledge claims against the City?  
57: 1 A. I don't know.  
3 Q. Have you ever analyzed whether these service  
4 corporations may have claims against the City?  
5 A. No.  
6 Q. Have you analyzed whether or evaluated -- strike that.  
7 Let me start again.  
8 Have you evaluated whether the City has  
9 claims against the Swap counterparties?  
12 Q. Has Miller Buckfire evaluated whether the City has  
13 claims against the Swap counterparties?  
14 A. No.  
15 Q. Has anyone else working for the City analyzed whether  
16 the City has claims against the Swap counterparties?

# **Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire**

18 A. No.  
20 Q. No, you don't know --  
21 A. I don't know.  
22 Q. So, Miller Buckfire performed no investigation into  
23 whether the City has claims against the Swap  
24 counterparties in connection with this forbearance  
25 agreement, correct?  
58: 2 A. No.

## **Designation:**

58:10 Q. Do you have a view as to what claims the forbearance  
11 agreement releases?  
12 A. No. The answer was no at end of the table. I'll  
13 speak up. I apologize.  
14 Q. Does the forbearance agreement operate to release any  
15 claims that might be held against the City?  
17 A. I don't know.

## **Designation:**

58:19 Q. Do you have an understanding of how interest rate  
20 movements may affect the termination payment that  
21 would become due under the Swap agreements?  
22 A. Yes.

## **Designation:**

58:25 Q. And what is that understanding?  
59: 1 A. Well, as interest rates come down, the Swap  
2 termination liability goes up.  
3 Q. And if interest rates go up, what happens to the Swap  
4 termination liability?  
5 A. Comes down.  
6 Q. And there would come a point if interest rates  
7 increased enough where the City could actually become  
8 in the money on the Swaps, is that correct?  
9 A. It would except that the Swap counterparties in 2009  
10 negotiated for the right to terminate the Swaps so  
11 they would never actually be in a net liability  
12 position against the City if that were to occur.  
13 Q. What is your basis for stating that the Swap  
14 counterparties negotiated the right to terminate the  
15 Swaps in 2009?  
16 A. Well, I've already testified that I reviewed the  
17 collateral amendment entered into in 2009 and  
18 discussed it with counsel to the City. In their  
19 review of the contract, and I can't remember exactly  
20 the provision now but that was their interpretation of  
21 the contract right.  
22 Q. Have you reviewed any of the other 2009 documents  
23 related to the Swaps?  
24 A. No.  
25 Q. Has the City undertaken any analysis to evaluate  
60: 1 future interest rate moves?  
2 A. We have reviewed the forward LIBOR curve.

## Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

3 Q. And who performed that review?  
4 A. That review was performed by Mr. Sanjay Marken, one of  
5 our associates. M A R K E N, first name S A N J A Y.  
6 Q. And when did he perform that review?  
7 A. The most recent one was performed a few days ago.  
8 Q. What did that review show?  
9 A. It showed that the current forward LIBOR curve does  
10 not show that the interest rate that's relevant to  
11 this Swap would ever rise above six-and-three-quarters  
12 percent which is the fixed rate on the Swap, and,  
13 therefore, the market is telling us that the  
14 probability of the Swap ever going in the money for  
15 the benefit of the City is very low.  
16 Q. Does the analysis address whether interest rates are  
17 generally rising or decreasing?  
18 A. The LIBOR curve is an observable market fact. I'm not  
19 going to speculate on when rates are going up or down.  
20 They will fluctuate.  
21 Q. Have interest rates increased since the forbearance  
22 agreement was executed?  
23 A. Yes.  
24 Q. And what effect has that increase on -- in interest  
25 rates had on the estimated termination payment under  
61: 1 the forbearance agreement?  
3 A. Well, the assumption in June of this year when we  
4 began to negotiate with the Swap counterparties was  
5 the termination payment was around four hundred  
6 million dollars. The rise in rates since that time  
7 and it's now almost August probably has reduced that  
8 termination payment to around three hundred million  
9 dollars or even lower.  
10 So, yes, the rise in rates has resulted in  
11 a reduction of the termination payment.  
12 Q. And is that analysis of the reduction to the  
13 termination payment something that Miller Buckfire has  
14 prepared?  
15 A. Well, there is a procedure embodied in the collateral  
16 agreement that lets you determine the termination  
17 payment if one is to occur. We've simply analyzed the  
18 net value of the assumed LIBOR payments and Swap  
19 payments and come up with our own estimate.  
20 Q. And that analysis was performed by Mr. Marken?  
21 A. That's right.

**Designation:**

63: 3 Q. Mr. Buckfire, did Mr. Marken perform any analysis  
4 related to the interest rates' effect on the Swaps  
5 prior to the analysis he performed a few days ago?  
6 A. No.

**Designation:**

63:19 Q. Did you describe what claims you would litigate  
20 aggressively to the Swap counterparties?  
21 A. No.

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22 Q. Did you make any assertions to the Swap counterparties  
23 concerning the validity of their liens at the June 4th  
24 meeting?  
25 A. No.  
64: 1 Q. Was the potential of the City challenging the liens  
2 held by the Swap counterparties ever a matter  
3 discussed during the negotiation of the forbearance  
4 agreement?

**Designation:**

64: 7 Q. Discussed with the Swap counterparties.  
8 A. Yes.  
9 Q. When was that discussed?  
10 A. It was a very hectic period. I did really almost  
11 nothing between June 4th and the 11th but try to  
12 negotiate this deal. I know at several points in my  
13 conversations with the business people I let them know  
14 that if there were issues with the collateral, we  
15 would raise them if necessary to protect the City.  
16 Q. Did you articulate what those issues might be?  
17 A. No.

**Designation:**

65: 8 Q. So, you never performed an analysis of the merits of  
9 those claims?  
10 A. No.

**Designation:**

65:19 Q. Did you assert any arguments or potential litigation  
20 claims other than the issues surrounding the granting  
21 of the liens in your negotiations with the Swap  
22 counterparties?  
23 A. No.  
24 Q. Did you articulate to the Swap counterparties why in  
25 the City's view the liens may or may not be valid?  
66: 1 A. Not directly, no.

**Designation:**

69: 7 Q. You testified that as of the last analysis your  
8 understanding is the estimated amount of the  
9 termination payment that would be due is roughly three  
10 hundred million dollars, is that correct?  
11 A. Well, it clearly moves around as the interest rate  
12 curve moves around. I think the most recent number is  
13 somewhere reaching 275 and 300 million dollars.  
14 That's before the application of the applicable  
15 discount that we had provided for in the termination  
16 agreement.  
17 Q. And that last analysis, when was that performed?  
18 A. A few days ago.

# **Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire**

**Designation:**

69:23 Q. Does the City have a plan at this point for how it  
24 will obtain the cash necessary to pay the termination  
25 payment?

**Designation:**

70: 3 A. Yes, the City has a plan.

**Designation:**

70: 5 Q. And what is that plan?  
6 A. The City intends to secure a debtor in possession  
7 financing of sufficient proceeds to fund the  
8 termination payment as well as provide sufficient cash  
9 for the City to execute on its reinvestment program  
10 during the bankruptcy.

**Designation:**

70:18 Q. And is Miller Buckfire leading the effort to obtain  
19 debtor in possession financing?  
20 A. Yes.

**Designation:**

71:16 Q. And do you know who those ten entities are that have  
17 said they are not interested?  
18 A. I do, yes.  
19 Q. And who are they?  
20 A. I'm not going to tell you that.  
21 Q. On what basis?  
22 A. It's commercially sensitive information.

**Designation:**

73:24 Q. What covenants, if any, are included in the RFP as  
25 being acceptable or not acceptable?  
74: 1 A. I'm not going to discuss that. It's commercially  
2 sensitive.

**Designation:**

74: 6 Q. And is the City offering a lien on casino revenues in  
7 connection with the DIP financing?  
8 A. In part.

**Designation:**

74:12 Q. No doubt. What other collateral is the City offering  
13 to secure the DIP financing loan?  
14 A. I'm not going to answer that question.

# **Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire**

**Designation:**

75: 2 Q. Is the City offering art work as collateral?  
3 A. I'm not going to discuss the terms of the term sheet,  
4 sorry.

**Designation:**

76:15 Q. Has the City had discussions with the State of  
16 Michigan about providing financing?  
17 A. I'm not going to discuss that.

**Designation:**

76:21 Are there certain events that the City  
22 believes has to happen in the case for it to be able  
23 to realistically obtain debtor-in-possession  
24 financing?  
25 A. Yes, there are events in the case.  
77: 1 Q. And what is that deal?

**Designation:**

77: 4 A. Well, we have to find a willing lender, that's number  
5 one. Number two, we have to have a court order  
6 approving the form of the DIP financing, and, number  
7 three, we believe we need to have approval of the  
8 forbearance and termination agreements we get the  
9 benefit of the elimination of the collateral pledge  
10 and the benefit of the discount.

**Designation:**

77:12 Q. Do you need a determination on eligibility as well?  
13 A. Probably as a condition to closing but not as a  
14 condition to getting a loan commitment.

**Designation:**

79:10 Q. And if the City obtains a debtor-in-possession  
11 financing, what's the intended use of the financing?

**Designation:**

79:14 A. I've already answered it.

**Designation:**

79:16 Q. Why don't you go ahead, say it again.  
17 A. We'll use proceeds to terminate the Swaps at the  
18 discount provided for in the forbearance agreement and  
19 the balance of the DIP loan will be retained by the  
20 City as working capital and to support its  
21 reinvestment program.  
22 Q. Are there any other intended uses to the DIP financing  
23 other than the two you just said?

# **Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire**

24 A. Not that I'm aware of.

## **Designation:**

85: 6 Q. Go back to the negotiations that occurred in 2013.  
7 Did you invite Syncora to participate in those  
8 negotiations?  
9 A. No.  
10 Q. Why not?  
11 A. They weren't a party to the collateral agreement.  
12 Q. Did you consult with Mr. Orr as to whether Syncora  
13 should be invited to the negotiations?  
14 A. No.  
15 Q. Did you invite Financial Guaranty Insurance Company to  
16 participate in the negotiations concerning the  
17 forbearance agreement?  
18 A. No.  
19 Q. Did you consult with Mr. Orr with respect to the  
20 decision whether Financial Guaranty Insurance Company  
21 should be invited to those negotiations?  
22 A. No.  
23 Q. So, you made that decision -- how did you come to the  
24 decision not to invite -- we'll call it FGIC?  
25 A. It never came up. They weren't a party to the  
86: 1 agreement.  
2 Q. Did you invite US Bank to participate in the  
3 negotiations concerning the forbearance agreement?  
4 A. No.  
5 Q. Why not?  
6 A. Not a party to the agreement.  
7 Q. To the collateral agreement?  
8 A. Correct.  
9 Q. And to your knowledge no one else invited Syncora,  
10 FGIC or US Bank to participate in the negotiations on  
11 the forbearance agreement?  
12 A. Correct.

## **Designation:**

87:11 Q. Did you ever advise Mr. Orr that you thought Syncora  
12 should be a party to the negotiations?  
13 A. No.

## **Designation:**

88:11 Q. At any time during the negotiations in 2013 did the  
12 Swap counterparties send a notice of an event of  
13 default?  
14 A. I don't recall if we ever received an official notice  
15 but we certainly were aware of the fact they could  
16 send one at any time.  
17 Q. And at any time during the negotiations in 2013 did  
18 the Swap counterparties formally designate an early  
19 termination date?  
20 A. No.

# **Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire**

## **Designation:**

89: 3 Q. Now, you've indicated there was I guess an agreement  
4 -- is it fair to say there was an agreement at least  
5 in principle on the terms of the forbearance agreement  
6 on or before June 11th, is that correct?  
8 A. There was an economic understanding, yes.

## **Designation:**

89:10 Q. What happened after June 11th with respect to the  
11 negotiations?  
12 A. Well, the attorneys for the City and for the Swap  
13 counterparties began to negotiate the forbearance  
14 agreement. I was not directly involved in that  
15 because it was primarily in fact solely with respect  
16 to the nonfinancial terms of it.  
17 That took several weeks of very intensive  
18 work amongst the lawyers for all the parties to arrive  
19 at an agreement that could be executed which it turned  
20 out not before July 15th.  
21 So, it took about a month to complete the  
22 negotiations for the agreement, so --  
23 Q. Other than attorneys working to document I guess the  
24 legal terms -- well, document the whole thing, was  
25 there anything else that caused a month, approximately  
90: 1 a month to elapse between agreement on the financial  
2 terms and execution of the forbearance agreement?  
3 A. No, it was a very, very active negotiation amongst the  
4 parties to the arrive at the final document.

## **Designation:**

93: 8 Q. To your knowledge at no point in 2012 did the Swap  
9 counterparties send a notice of an event of default to  
10 the City?  
13 A. Not to my knowledge.

## **Designation:**

94:17 Q. You're familiar with the Detroit General Retirement  
18 System Service Corporation and the Detroit Police and  
19 Fire Retirement System Service Corporation?  
20 A. I know they exist.  
21 Q. Do you have an understanding -- just for the record  
22 I'll refer to them as the service corporations, do you  
23 have an understanding what the service corporations  
24 are?  
25 A. Yes.  
95: 1 Q. And what is that understanding?  
2 A. They were created for the purpose of the City  
3 borrowing 1.4 billion dollars in 2005 and 2006 and  
4 making a contributions of the like amount to the  
5 pension funds.  
6 Q. Do you understand the service corporations to be

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7 controlled by the City?

8 A. Yes.

9 Q. And do you understand the service corporations to be

10 controlled by the emergency manager?

11 A. I assume that's the case but I don't know for a fact.

12 Q. And the service corporations are in fact parties to

13 the forbearance agreement, correct?

14 A. Yes, they are.

15 Q. Who acted on behalf of the service corporations in

16 connection with the forbearance agreement?

17 A. The City did.

18 Q. And by the City can you identify the individuals that

19 you are referring to when you say the City?

20 A. Mr. Orr.

21 Q. To your knowledge did any members of the Board of

22 Directors of the service corporations consult with

23 Mr. Orr about the forbearance agreement?

24 A. I don't know.

25 Q. Did Mr. Orr -- let's ask it the other way. Did

96: 1 Mr. Orr consult with any members of the Board of

2 Directors of the service corporations in connection

3 with the forbearance agreement?

4 A. I don't know.

5 Q. Did anyone at Miller Buckfire have any contact with

6 anyone, any -- any member of the Board of Directors of

7 the service corporations in connection with the

8 negotiations?

9 A. I don't think so.

10 Q. And do you know who presented the forbearance

11 agreement to the service corporations for execution?

12 A. No.

13 Q. Would Mr. Orr know that?

14 A. I don't know.

15 Q. Do you know who would know that?

16 A. I don't know.

17 Q. The person who signed the forbearance agreement on

18 behalf of the service corporations, a woman named

19 Cheryl Johnson, is that correct?

20 A. Yes.

21 Q. Do you know Miss Johnson?

22 A. No.

23 Q. Do you know what position Miss Johnson holds, if any,

24 on the service corporations?

25 A. Well, the signature page indicates that she's the

97: 1 president.

2 Q. You've never spoken to Miss Johnson about the

3 forbearance agreement?

4 A. No.

5 Q. Have you ever spoken with Portia Roberson about the

6 forbearance agreement?

7 A. No.

8 Q. Do you know Miss Roberson?

9 A. No.

10 Q. Has anyone from Miller Buckfire ever spoken with

11 Miss Roberson?

12 A. I don't know.

## **Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire**

13 Q. Are you aware that the insurers contend that the Swap  
14 agreements cannot be terminated without their consent?  
15 A. Yes.  
16 Q. And when did you first become aware of that  
17 contention?  
18 A. Well, last week in court I heard Mr. Hackney describe  
19 those arguments to the judge.  
20 Q. Have you taken any steps to evaluate whether the City  
21 agrees with the insurer's construction of the  
22 operative documents on this point?  
23 A. No.

**Designation:**

98:25 Q. Are you aware that the insurers contend they have the  
99: 1 right to control essentially all actions to be taken  
2 by the Swap counterparties in connection with the Swap  
3 agreements?

**Designation:**

99: 5 A. Yes, I am.

**Designation:**

99: 7 Q. And when did you develop that awareness?  
8 A. When I was in court last week listening to  
9 Mr. Hackney's description of those issues to the  
10 judge.  
11 Q. And have you taken any steps to evaluate whether the  
12 City concurs with the insurer's construction of the  
13 documents on this point?  
14 A. No.

**Designation:**

101: 8 Q. In determining whether to enter into the settlement  
9 agreement, did the City consider whether the casino  
10 revenues constituted special revenues under the  
11 bankruptcy code?  
16 A. No.  
18 Q. So, you didn't consider it or you don't know?  
19 A. I said we didn't consider it.

**Designation:**

107:10 Q. Has the City considered selling or leasing Belle Isle?  
11 A. Not to my knowledge.

**Designation:**

107:12 Q. Has the City looked into possible sources of funding  
13 from the State of Michigan?  
14 A. I'm not going to discuss that.  
15 Q. Has the City looked into possible sources of funding

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16 from the federal government?  
17 A. I'm not going to discuss that either.  
18 Q. On what basis?  
19 A. Commercially sensitive information.

## Designation:

108: 6 Q. Mr. Buckfire, good afternoon. My name is Steve  
7 Hackney. I'm an attorney at Kirkland & Ellis, and I  
8 represent Syncora Capital Assurance and Syncora  
9 Guaranty. Nice to meet you.  
10 A. Likewise.

## Designation:

109: 4 So, as I understood your testimony, you  
5 were the lead negotiator for the City when it came to  
6 negotiating the business deal, is that correct?  
7 A. Yes.  
8 Q. Other people were going to paper the business deal in  
9 terms of the legal terms that would embody it,  
10 correct?  
11 A. Yes.  
12 Q. Let me ask you a question. The kickoff of the  
13 negotiations that led to the forbearance agreement I  
14 understood you to say began on June 4th, correct?  
15 A. Yes.  
16 Q. Who called that meeting?  
17 A. Counsel to Jones Day called counsel for BAML and  
18 invited them to the meeting.  
19 Q. Fair to say that the meeting was held at the behest of  
20 the City of Detroit?  
21 A. Yes.  
22 Q. Did you take legal advice, you personally as the lead  
23 negotiator for the City, did you take legal advice  
24 from Jones Day in advance of the June 4 meeting?  
25 A. Yes.  
110: 1 Q. Would you disclose to me the legal advice you obtained  
2 from them?  
3 MR. CULLEN: I'll instruct him not to  
4 answer.  
5 MR. HACKNEY: So, if I ask questions about  
6 the legal advice you had been given about the COPs  
7 Swap structure or various parties' rights thereunder,  
8 you would instruct the witness not to answer those  
9 questions?  
10 MR. CULLEN: Right.  
11 MR. HACKNEY: And I take it, Mr. Cullen,  
12 that instruction would remain true both from -- at any  
13 time?  
14 MR. CULLEN: Right.  
15 MR. HACKNEY: Not just with respect to the  
16 June 4 meeting?  
17 MR. CULLEN: Precisely.  
18 BY MR. HACKNEY:  
19 Q. Okay. Let me ask you, Mr. Buckfire, I'm going to

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20           speculate, perhaps not wildly, that you've negotiated  
21           a few deals in your lifetime.

22     A.     Yes.

23     Q.     Isn't it fair to say as a negotiator, you have to have  
24           an understanding of the financial needs and desires of  
25           your client as well as the counterparty with whom you  
111: 1       are negotiating?

2     A.     Yes.

3     Q.     You also have to have at least some understanding of  
4           the legal framework in order to negotiate effectively,  
5           correct?

6     A.     Yes.

7     Q.     You don't have to go to law school, right, but you do  
8           have to understand some of the ins and outs of the  
9           various legal documents that you're negotiating over,  
10           correct?

11    A.     As well as any layman can be expected to do so.

12    Q.     Now, I'd like to get a level set as to where you were  
13           on June 4th, 2013 as you're going into this meeting  
14           with BAML.

15    A.     And UBS.

16    Q.     And UBS. So, they were there too?

17    A.     Yes.

18    Q.     Okay. I want to make sure I have a level set under  
19           the operating assumptions that you had in your mind as  
20           you were going into the meeting to negotiate with the  
21           Swap counterparties, okay?

22           One of your operating assumptions was that  
23           there were termination events existing under the  
24           Swaps, correct?

25    A.     There were events of default existing under the Swaps,  
112: 1       the collateral agreement.

2     Q.     Okay. So, let's take a step back and let me be more  
3           precise.

4     A.     Okay.

5     Q.     So, there is a Swap agreement that the Swap  
6           counterparties are parties to with the service  
7           corporations?

8     A.     Correct.

9     Q.     You are aware of that?

10    A.     I am.

11    Q.     You are also aware that there is a collateral  
12           agreement that is between among other parties the  
13           City, the service corporations and the Swap  
14           counterparties, correct?

15    A.     Yes.

16    Q.     Now, at the time you're going into the June 4 meeting,  
17           one of your operating assumptions was that there were  
18           termination events under the Swap that would give the  
19           Swap counterparties the right to terminate?

25    A.     No, I was focused on the cash issue that would be at  
113: 1       risk under the collateral agreement.

3     Q.     And let me tie it up a little bit to see if this jogs  
4           your memory. The collateral agreement certainly  
5           relates to the Swaps that was entered into in 2009,  
6           correct?

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7 A. Correct.  
8 Q. The collateral agreement cash trap arguably slams shut  
9 upon the occurrence of termination events or events of  
10 default under the Swap, is that your understanding?  
15 Q. Okay.  
16 A. Want to try again.  
17 Q. Did you understand that the collateral agreement and  
18 the cash trapping were securitizing the City's  
19 obligations to the service corporations and the  
20 service corporations' obligations to the Swap  
21 counterparties under the Swap?  
22 A. No.  
23 Q. Did you understand that the collateral agreement what  
24 it was ultimately securing was the termination payment  
25 that might be made under the Swaps?  
114: 2 A. No.  
4 Q. Did you believe that the collateral agreement had  
5 created like a new obligation by the City to pay the  
6 Swap counterparties?  
7 A. It created a collateralized obligation to pay the Swap  
8 counterparties.  
9 Q. Okay. So, going back to the June 4 meeting, let me  
10 put it in vernacular that I hope is more correct about  
11 what you were assuming. Okay?  
12 You were assuming that there had been  
13 events of default under the collateral agreement that  
14 would allow the Swap counterparties to trap cash,  
15 correct?  
16 A. I wasn't assuming anything. I knew there were two  
17 events of default.  
18 Q. Let me --  
19 A. But they had not been asserted by the Swap  
20 counterparties but they existed.  
21 Q. Let me restate it. As of June 4 you knew that there  
22 were events of default under the collateral agreement  
23 that would allow the Swap counterparties to trap cash,  
24 fair statement?  
25 A. If they chose to do so, yes.  
115: 1 Q. If they chose to do so.  
2 A. Correct.  
3 Q. And you also -- let me make sure I get this right.  
4 You also believed that they would be able to declare  
5 termination event and potentially be paid four hundred  
6 million dollars, correct?  
7 A. Yes.  
8 Q. And that was also one of your operating assumptions as  
9 you're going into the negotiation, correct?  
10 A. Yes.  
11 Q. And your understanding that they could do so was that  
12 they could do so unilaterally, correct?  
13 A. Correct.  
14 Q. And your understanding with both with respect to  
15 declaring termination of the Swaps and getting a  
16 termination payment and trapping cash was that there  
17 was no other party that could direct their actions,  
18 correct?

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19 A. That's correct.  
20 Q. And your understanding of these operating assumptions  
21 remain consistent between June 4 and June 11 when you  
22 struck the agreement in principle, correct?  
23 A. Correct.  
24 Q. And in fact it remained consistent for you all the way  
25 through the execution on July 15th of the forbearance  
116: 1 agreement, correct?  
2 A. Correct.  
3 Q. And the forbearance agreement itself did not  
4 materially change the business terms of the deal that  
5 you had struck on June 11th, correct?  
6 A. No, except for the small negotiation we had around the  
7 date of the first option. It was the only material  
8 business term that changed.  
9 Q. Okay. So, there was some changes of timing in terms  
10 of when the percentages stepped up?  
11 A. Yes, because the agreement took a long time to  
12 negotiate. We had originally assumed we would  
13 complete a forbearance in June. It took until July so  
14 we asked for and were granted an additional month on  
15 the first option payment.  
16 Q. Fair point. Thank you for that correction. Other  
17 than that change to what I'll describe as the business  
18 terms that you negotiated on June 11th, there were no  
19 other material changes to the deal that you struck,  
20 correct?  
21 A. No.  
22 Q. It was just legal beagles doing what they do, correct?  
23 A. I would never call them legal beagles, but yes, the  
24 lawyers were doing what they were supposed to do.  
25 Q. Okay. All right. Now, I want to clarify at the June  
117: 1 4 meeting other than saying that the City would  
2 vigorously litigate attempts to trap cash, you did not  
3 express the City's views on the merits of that  
4 litigation, correct?  
5 A. Correct.  
6 Q. You just said we're going to fight like hell to stop  
7 you from trapping cash or words to that effect?  
8 A. That's correct.  
9 Q. And you didn't say by the way here's why we are going  
10 to win because we have this great argument and you're  
11 going to lose, right?  
12 A. I never said that.  
13 Q. Never said words to that effect, correct?  
14 A. No.  
15 Q. Never attempted to argue the merits of why the Swap  
16 counterparties wouldn't be able to trap cash, fair  
17 statement?  
18 A. Correct.  
19 Q. And no one else on the City side did either, correct?  
21 A. Not to my recollection.  
23 Q. And you never attempted to argue the merits of the  
24 City's case to the Swap counterparties at any time  
25 between June 4 and June 11 when you reached the  
118: 1 agreement in principle, correct?

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2 A. Correct.  
3 Q. And you never witnessed anyone else do so on behalf of  
4 the City either, correct?  
5 A. Not that I recall.

**Designation:**

120:13 Q. Now, at the time of the June 4 meeting you were aware  
14 that a bankruptcy filing for the City of Detroit was  
15 at least a possibility, correct?  
16 A. Yes.  
17 Q. Had you reached the view at that time that it was a  
18 likelihood?  
19 A. It was a possibility.

**Designation:**

121: 4 Q. And if I ask you at the time -- well, let me ask a  
5 general question. I'm not asking you to disclose the  
6 subject of communication -- the communications  
7 themselves, but I want to ask whether you had taken  
8 legal advice on the subject of the automatic stay.  
9 Don't tell me what the legal advice was.  
10 Had you taken legal advice on the subject  
11 of the automatic stay at any time between June 4 and  
12 June 11?  
14 A. Yes, I did.  
16 Q. So, you had taken legal advice from Jones Day, is that  
17 correct?  
18 A. Correct.  
19 Q. But if I ask you what the advice was, you'll follow  
20 your counsel's instruction and not answer, correct?  
21 A. Correct.

**Designation:**

122: 4 Q. I have a broader question which is at any time prior  
5 to June 11th did you or anyone else at Miller Buckfire  
6 to your knowledge perform an analysis of what interest  
7 rates were likely to do in the future?  
8 A. No.  
9 Q. Did anyone study any LIBOR curves prior to June 11?  
10 A. I don't recall.  
11 Q. You certainly didn't?  
12 A. I did not.  
13 Q. Okay. When you testified about Mr. Marken, you  
14 testified about something I think he had done a couple  
15 days ago and we're in August. So, I'm going to ask  
16 the same question now about July 15th which is the  
17 execution date.  
18 As of the execution date of the forbearance  
19 agreement, had you or anyone else at Miller Buckfire  
20 undertaken an assessment of what interest rates were

# Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

21 likely to do?  
22 A. No.

## Designation:

123: 6 Q. You were asked a lot of questions about the service  
7 corporations. I think we established that you don't  
8 know their directors and haven't met them, but I want  
9 to make a point clear about the negotiations which is  
10 you never engaged in arm's length negotiations with  
11 the service corporations, correct?  
12 A. Correct.  
13 Q. And you never witnessed anyone else do so either,  
14 correct?  
15 A. Correct.  
16 Q. And it's your understanding that Mr. Orr directed the  
17 service corporations to execute the agreement and they  
18 did, correct?  
19 A. Correct.  
20 Q. Now, you referenced a standstill agreement that was  
21 something that had been proposed by the Swap  
22 counterparties prior to June 4, 2013.  
23 Do you recall that testimony?  
24 A. I do.  
25 Q. Your understanding of the standstill agreement, I  
124: 1 understand we are going to get it but we don't have it  
2 today so I have to tell you what I understand from  
3 your testimony.  
4 Your understanding of it was that it  
5 allowed the cash to flow out of the -- it allowed the  
6 casino revenues to flow in exchange for the City  
7 agreeing to waive arguments about the invalidity of  
8 the Swaps but was terminable at any time?  
9 A. By the Swap counterparties.  
10 Q. By the Swap counterparties, correct?  
11 A. Correct.  
12 Q. And that was unacceptable because that meant at any  
13 time they could change their mind and trap the cash,  
14 correct?  
15 A. By those terms, yes.  
16 Q. Now, under the forbearance agreement I understand that  
17 you're not an attorney but you are a sophisticated  
18 businessman who deals with legal documents on a  
19 regular basis, true statement?  
20 A. Regrettably.  
21 Q. More than he wants to? But under the forbearance  
22 agreement isn't it true that your understanding is  
23 that the City has agreed during the forbearance period  
24 that it won't seek to declare the Swaps invalid,  
25 correct?  
125: 1 A. Correct.  
2 Q. And during the forbearance period the Swap  
3 counterparties are allowing the cash to flow through  
4 the collateral account, right?  
5 A. Yes.  
6 Q. So, they waive their argument to trap the cash in

# **Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire**

7 exchange for other things that they got, correct?  
8 A. Correct.

## **Designation:**

126:15 Q. You never proposed what I'll call a smaller deal that  
16 would have attempted to maintain the status quo for  
17 some period of time without trying to achieve a  
18 potential termination of a Swap at a discount so on  
19 and so forth, true statement?  
20 A. True.

## **Designation:**

127: 6 Q. Isn't it true that between March 12th of -- between  
7 March of 2012 and June 4th, 2013, the Swap  
8 counterparties had never terminated the Swaps,  
9 correct?  
10 A. That's true.  
11 Q. Despite the fact that in your view they had the right  
12 to do so, right?  
13 A. That's correct.  
14 Q. And during that entire time period which is 14 months  
15 they had never demanded that cash be trapped, correct?  
16 A. No, they hadn't.

## **Designation:**

129:13 Q. Understood. That's very helpful. So, let me try and  
14 summarize it which is when you re-engaged in January  
15 of 2013, you were made aware of a -- of the general  
16 desire of the Swap counterparties to for lack of a  
17 better term figure out what the City and the Swap  
18 counterparties were going to do about the Swap,  
19 correct?  
20 A. Yes.  
21 Q. And you then held them off between that time and June  
22 4 as you tried to buy time for Ernst & Young to get  
23 its arms around the financial position of the City,  
24 correct?  
25 A. Yes, and our other advisors.  
130: 1 Q. And your other advisors, absolutely. And it was only  
2 after you had gotten that analysis done that you felt  
3 you were now ready to initiate a meeting with the Swap  
4 counterparties to speak meaningfully about what should  
5 be done with the Swap?  
6 A. In the context of an overall recommendation to Mr. Orr  
7 about how to protect the City and its liquidity.  
8 Q. And so during that time period which was from January  
9 of 2013 to June of 2013, despite these growing signs  
10 of impatience by the Swap counterparties, they still  
11 didn't trap cash, did they?  
12 A. They were being paid in the ordinary course. There  
13 was no economic consequence that they had to worry  
14 about. They didn't know the financial condition of  
15 the City. There was no economic reason for them to do

## Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

16 anything, but clearly as the condition of the City  
17 became more desperate and everyone became more aware  
18 of it, the risk they would do something became  
19 greater.

20 Q. I see. So, it was the disclosure of information by  
21 Mr. Orr on June 14th, was that a factor that drove you  
22 to negotiate in advance of that?

23 A. No. Recall that his earlier disclosure was I believe  
24 in April.

25 Q. Oh, that's right.

131: 1 A. And that was the first time that the public and the  
2 capital markets really became aware of the true  
3 financial condition of Detroit.

4 Q. So, in April Mr. Orr made a disclosure that basically  
5 said if I could summarize that things are not well in  
6 Detroit, correct?

7 A. That's accurate.

8 Q. But despite that disclosure and subsequent to the  
9 report in April and May, Swap counterparties didn't  
10 demand cash be trapped, correct?

11 A. Correct.

12 Q. They didn't terminate the Swap, correct?

13 A. Correct.

14 Q. After June 11, after you've cut the business deal and  
15 here come the lawyers to write it down, fair to say  
16 that you're on the sidelines now as the lawyers work  
17 out the legal language, but you're still monitoring  
18 the course of the legal negotiations given the  
19 importance of what's at stake?

22 A. I was generally aware of what was going on.

24 Q. I'm trying to get on the idea that you're not on the  
25 phone with all these lawyers like directly  
132: 1 participating and listening to the negotiations of the  
2 forbearance agreement itself but you're keeping tabs  
3 on how it's progressing and when it's hoped to be  
4 executed, correct?

5 A. Correct.

6 Q. Put another way, you are aware of the legal  
7 negotiation process as it goes along even though  
8 you're not personally involved in it, correct?

9 A. Correct.

10 Q. And that's because this was such an important  
11 agreement that you as an important advisor to the City  
12 needed to be up to speed on what was going on with the  
13 forbearance agreement?

14 A. Correct, but recall that on June 11th the Swap  
15 counterparties did issue a letter to US Bank  
16 authorizing them to release the tranche of cash due to  
17 us on June 15th and therefore we knew we had until  
18 July 15th to get to the next tranche.  
19 So, from a financial perspective I was  
20 comfortable with where we were with the Swap  
21 counterparties.

22 Q. Because after that discharge of cash, then it goes  
23 back to just slowly building up, you get it for the  
24 rest of the month and then it slowly builds up in the

# Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

25 first part of July?

133: 1 A. Correct.

2 Q. So, you felt like we had some time to negotiate?

3 A. That's correct.

4 Q. Yeah. Your understanding is that the legal

5 negotiations of the forbearance agreement were

6 complicated but that they proceeded uninterrupted from

7 June 11th to July 15th, correct?

8 A. Correct.

9 Q. And if there had been a serious interruption in these

10 negotiations, you would have likely known about this

11 as an important advisor to the City, correct?

12 A. Yes.

13 Q. And you are aware of no serious interruption, correct?

14 A. No.

15 Q. That's not correct?

16 A. I'm not aware of any serious interruptions.

17 Q. In late June of 2013 you learned that Syncora wanted

18 to make a proposal to the City, isn't that correct?

19 A. Yes.

20 Q. And you had a conversation with Todd Snyder on the

21 subject of Syncora's potential proposal on Saturday,

22 June 29th, isn't that correct?

23 A. That's correct.

24 Q. Mr. Snyder you understood is a banker at Rothschild's,

25 correct?

134: 1 A. Correct.

2 Q. And you also understood that he was representing

3 Syncora, correct?

4 A. Yes.

5 Q. And you also understood that at the time that he was

6 calling you, that there had been previous

7 communications between counsel to Syncora and counsel

8 to the City, correct?

9 A. I had heard about it but I wasn't aware of the

10 specifics.

11 Q. Okay. So, you knew Jones Day and Kirkland and maybe

12 others had met and talked about something but you

13 didn't know what it was?

14 A. I knew they were talking about the issues raised by

15 Syncora.

16 Q. Okay. Now, tell me -- so, in terms of Syncora's

17 potential proposal, your first percipient knowledge of

18 it as a witness happens on that Saturday when you have

19 your conversation with Mr. Snyder, is that a fair

20 statement?

21 A. Correct.

22 Q. Tell me everything you can recall about that

23 conversation.

24 A. It was quite brief. Todd told me he had been retained

25 by Syncora and that they wanted to propose something

135: 1 that would be of benefit to the City in resolving the

2 Swap matter. I told him that we were always willing

3 to listen to anything anyone had to say and I asked

4 him to tell me what he had in mind. He never did.

5 Q. Have you told me everything you can recall about that

# Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

6 conversation?  
7 A. Yes.  
8 Q. During that conversation didn't Mr. Snyder describe  
9 the general structure of a proposal Syncora wanted to  
10 make?  
11 A. No.  
12 Q. So, if Mr. Snyder says he did, he's lying or mistaken?  
13 A. He never made a specific proposal to me.  
14 Q. I'm not saying a specific proposal, I'm saying a  
15 general structure of a proposal, that's what he  
16 testified to in his affidavit.  
17 Did he provide to you the general structure  
18 of a proposal that Syncora wanted to make?  
19 A. Not that I recall.  
20 Q. Possible he did, possible he didn't, you just can't  
21 remember?  
22 A. I can't remember.  
23 Q. Did he tell you that we'd be able to put specifics  
24 into the general structure of the proposal if we could  
25 execute an NDA that would allow us to learn about the  
136: 1 negotiations with the Swap counterparties?  
2 A. Yes, he did.  
3 Q. What did you tell him in response to that?  
4 A. I said he should send us an NDA and we'll take a look  
5 at it.  
6 Q. And you understood that at least as he expressed to  
7 you that he wanted an NDA as a precursor in order to  
8 make a specific proposal, correct?  
9 A. Correct.  
10 Q. Isn't it true that after that time you understood that  
11 an NDA was proposed to the City, correct?  
12 A. Yes.  
13 Q. And the City refused to execute that NDA, isn't that  
14 correct?  
15 A. That's correct.

## Designation:

137:15 Q. And that's because -- but you do remember him telling  
16 you the specifics would come after we sign an NDA?  
17 A. I do.  
18 Q. Yeah. And then your understanding is that there was a  
19 problem with the NDA that you couldn't discuss the  
20 proposal with the EFM?  
21 A. That's correct.  
22 Q. And that was something that the parties couldn't get  
23 over?  
24 A. I asked Jones Day to go back to Kirkland Ellis and try  
25 to fix the problems we had in the NDA and then I moved  
138: 1 on to other issues.  
2 Q. And your understanding was that to the extent those  
3 problems didn't get fixed it was because Kirkland  
4 Ellis was being obstinate with respect to the terms of  
5 NDA?  
6 A. I don't know why we never resolved it.  
7 Q. So, to this day you don't know whether or not an NDA

## Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

8           could have been struck that would have allowed Syncora  
9           to make a rival proposal, correct?  
10          A.     All I can tell you is that no NDA was entered into  
11           because the terms were unacceptable.  
12          Q.     And you don't know why one wasn't entered into  
13           ultimately after that?  
14          A.     I don't think we could ever resolve the issues.  
15          Q.     And this was in advance of your having executed the  
16           forbearance agreement, correct?  
17          A.     Yes.  
18          Q.     As a negotiator, don't you agree that it's nice  
19           whenever you can play two parties off against each  
20           other?  
21          A.     I didn't have two parties, I had one party. I had the  
22           Swap counterparties.  
23          Q.     And I'm not asking about in this case, I'm asking  
24           about as a general principle, isn't it nice when you  
25           can play two parties off against each other?  
139: 1       A.     Sometimes.  
2          Q.     Isn't that something that you'll do in the DIP  
3           financing which is you'll get all these offers in and  
4           then you'll make these guys compete with each other in  
5           order to drive best possible deal for the City,  
6           correct?  
7          A.     Only if you assume a level playing field which this  
8           negotiation was not.  
9          Q.     I'm just asking generally about the idea of trying to  
10           drive the best deal possible through competition  
11           amongst different negotiating parties. Can be  
12           valuable, right?  
13          A.     Can be under the right circumstances. This was not  
14           one of them.  
15          Q.     And what was wrong about the circumstances?  
16          A.     Because we had only two parties to the table, the Swap  
17           counterparties who had signed the collateral  
18           agreement. There was nobody else to negotiate with.  
19          Q.     That's right, that's right, because your understanding  
20           was that Syncora had no rights whatsoever under the  
21           collateral agreement, correct?  
22          A.     Correct.  
23          Q.     And your understanding was they had no ability to  
24           direct the actions of the Swap counterparties,  
25           correct?  
140: 1       A.     I testified earlier that my understanding, I was  
2           advised, the only parties of interest here are the  
3           Swap counterparties.  
4          Q.     And it was also your understanding that Syncora didn't  
5           have any rights under the Swaps that would be  
6           terminated, correct?  
7          A.     Only talking about the collateral agreement.  
8          Q.     We talked about the fact that there might be a  
9           termination event for four hundred million dollars.  
10           That's not under the collateral agreement, right?  
11          A.     True.  
12          Q.     So, we are talking about the Swaps, right?  
13          A.     Yes.

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14 Q. Now, let's put aside what you've been told about who  
15 the relevant parties were. You did know that Syncora  
16 was a Swap insurer, right?  
17 A. Yes.  
18 Q. And you understood as a layperson but a sophisticated  
19 one that if an insurer makes a payment to the insured  
20 it becomes subrogated to the rights of the insured  
21 with respect to that payment, correct?  
22 A. Yes.  
23 Q. And isn't it true that if the Swap counterparties had  
24 terminated, they wouldn't have waited around for two  
25 years to collect the casino revenues, right, they  
141: 1 would have demanded Syncora made good on its Swap  
2 insurance and let Syncora try and stick around and  
3 collect the casino revenues, correct?  
6 A. It wasn't an issue for the City.  
8 Q. I'm asking whether you thought that was a possibility  
9 back at the time you were negotiating the forbearance  
10 agreement?  
11 A. It wasn't an issue for the City. Had no impact on the  
12 City's access to cash.  
13 Q. But if Syncora was a party that might come in in lieu  
14 of the Swap counterparties, didn't you want to find  
15 out whether you might be able to cut a better deal  
16 with Syncora?  
19 A. I can't speculate to that.  
21 Q. All you can say is that you never did, correct?  
22 A. Correct.  
23 Q. And in fact between June 29th when you spoke to  
24 Mr. Snyder and today, there have never been  
25 substantive negotiations between the City and Syncora  
142: 1 to your knowledge, isn't that correct?  
2 A. Not on this, no.

### **Designation:**

142:19 As the banker who is leading the DIP,  
20 what's your understanding of the role the casino  
21 revenues will play in the collateral package offered  
22 in connection with the DIP?  
23 A. They will be part of the collateral package.  
24 Q. So, they will be part, and when you say they, do you  
25 mean a specific period of time of the casino revenues  
143: 1 or do you mean casino revenues projecting into the  
2 future?  
3 A. It's commercially sensitive so I'm going to decline to  
4 answer it.

### **Designation:**

143:12 Q. You agree that the goal of the forbearance agreement  
13 is to get the collateral agreement to terminate so  
14 that the City can get access to the casino revenues,  
15 correct?  
17 A. That is one of the goals.  
19 Q. That is one of the goals. And isn't it true that your

## Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

20 current expectation is that you need the postpetition  
21 financing, the DIP loan to close in order to be able  
22 to exercise the option under the forbearance  
23 agreement, correct?

24 A. Correct.

25 Q. And there was testimony on that today because you  
144: 1 don't have the money otherwise, right, Mr. Buckfire?

2 A. That is part of the collateral package, yes.

3 Q. I'm talking about the use of proceeds of the DIP just  
4 so we're clear. Part of the use of proceeds of the  
5 DIP will be to exercise the option under the  
6 forbearance agreement, correct?

7 A. Correct.

8 Q. You understand that you won't have unfettered access  
9 to the casino revenues until you exercise the option  
10 that leads to the termination of a Swap in the  
11 collateral agreement, correct?

12 A. Yes.

13 Q. Isn't this a bit circular?

14 A. Regrettably.

15 Q. How did you factor that consideration into the  
16 determination as to whether to engage in the  
17 forbearance agreement?

18 A. Well, this is why the Swap collateral agreement is  
19 such a problem for the City. Unless we can eliminate  
20 the collateral and regain control over gaming revenues  
21 without risk of loss because of defaults that would  
22 trap it, we need to rationalize and clean this up in  
23 order to put the City on a sound financial basis.

24 Q. So, there are two parts -- there are -- there may be  
25 many parts but two of the important parts of the  
145: 1 forbearance agreement are getting the Swap  
2 counterparties to waive their right to trap cash and  
3 then taking out the Swap at a discounted value,  
4 correct?

5 A. Well, if we take out the Swap at a discounted value  
6 and we pay off the Swap, then there is no need for the  
7 collateral agreement.

8 Q. That's true but that may be something that happens  
9 down the road. So, in the interim between then it's  
10 the waiver of the cash trapping rights and the  
11 discounted potential value of the termination,  
12 correct?

13 A. Which is a short-term agreement. It only goes to next  
14 June. There are termination events along the way and  
15 in any case as I am aware as a sophisticated layman,  
16 there is risk under the bankruptcy code that the Swap  
17 counterparties could avail themselves of relief under  
18 the provisions for Swaps and irrespective of the  
19 automatic state, still take the money.

20 Q. Okay. But they've waived those rights under the  
21 forbearance agreement?

22 A. So long as the forbearance agreement exists.

23 Q. And they waive their rights under the collateral  
24 agreement to trap crash, correct?

25 A. For now.

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## Designation:

147:12 Q. So, I'd like to ask you about the concept of what I  
13 call a clean closing, okay, and a clean closing is one  
14 where you engage in a transaction with someone and  
15 both parties walk away from the transaction with an  
16 expectation that neither of them will have liability  
17 arising from the closing. That's what I mean when I  
18 say a clean closing.

19 Isn't it true that it's your understanding  
20 that it is important to the Swap counterparties that  
21 they get a clean closing with the City if the City  
22 exercises its option?

23 A. Yes.

## Designation:

149:16 Q. All right. Do you remember we talked about -- do you  
17 remember that you talked about the concept that the  
18 Swap counterparties could walk away from the Swaps if  
19 interest rates ever look like they were going into  
20 territory that was positive for the service  
21 corporations?

22 A. Yes.

23 Q. And that was a right that you understood they had  
24 received as part of the 2009 restructuring that led to  
25 the collateral agreement, correct?

150: 1 A. Yes.

2 Q. Do you understand that that's called an optional early  
3 termination?

4 A. Yes.

5 Q. And you understand that under -- when they exercise an  
6 optional early termination, the Swap counterparties  
7 take nothing from the service corporations, correct?

8 A. That's correct.

9 Q. That's the point of the walkaway which is they get to  
10 walk away but they don't get paid anything?

11 A. That's because the Swaps not in the money anymore.

12 Q. Well, even if it is or is it isn't, right?

13 A. Right.

14 Q. In fact today the Swaps are very much in the money,  
15 correct?

16 A. Correct.

17 Q. And obviously the Swap counterparties have never  
18 threatened to exercise an optional early termination,  
19 correct?

23 Q. To you?

24 A. No.

25 Q. That wouldn't make sense, would it?

151: 1 A. Not as long as you're being paid on time.

2 Q. And also why would you terminate a Swap on an optional  
3 early basis and be paid nothing when it is worth by  
4 your testimony approximately three hundred million  
5 dollars, correct?

7 A. It wouldn't be economically rational.

## Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

9 Q. That would not be economically rational. And your  
10 understanding under the forbearance agreement is  
11 what's happening is that in exchange for all the  
12 consideration, the Swap counterparties' termination  
13 rights are being discounted to somewhere between 75  
14 and 82 percent, correct?  
15 A. Correct.  
16 Q. We talked a lot about cash flow forecasts earlier.  
17 The cash flow forecasts that are contained in the  
18 proposal that you discussed with Mr. Summers, do you  
19 remember those?  
20 A. Yes, uh-huh.  
21 Q. E & Y prepared those, correct?  
22 A. Yes.  
23 Q. And you have certainly reviewed them and familiarized  
24 yourself with them, correct?  
25 A. Yes.  
152: 1 Q. But you are not someone who can answer specific  
2 questions about how they were created, correct?  
3 A. No, that's correct.  
4 Q. If I wanted to ask about any particular line item how  
5 did they get this number, the person to ask that would  
6 be Ernst & Young?  
7 A. Correct.  
8 Q. I'd like to go back and talk briefly about the art and  
9 I don't want to talk about the art as part of the DIP  
10 or anything like that or what you're going to do with  
11 it.  
12 I want to go back to June 4 and ask as of  
13 June 4, had you made an assessment of the value of the  
14 City's art collection?  
15 A. No.  
16 Q. Have you made even a rough approximation of its worth?  
17 A. No.  
18 Q. And why hadn't you done that?  
19 A. We're not qualified to do so.  
20 Q. Why hadn't you retained someone, gosh, back in  
21 January, February that was qualified to do so to come  
22 in and see whether these assets were valuable?  
23 A. We identified early on as an issue. We got to it as  
24 we could, but it was not a significant crisis for the  
25 City because we were focused on cash and preserving  
cash.  
153: 1 Q. Well, sometimes art can be turned into cash I think,  
2 isn't that right?  
3 A. Some people would think so.  
4 Q. In fact there are art sales of significant amount  
5 every year in this country, isn't that right?  
6 A. So I'm told.  
7 Q. And you've read about them in the paper from time to  
8 time when you read the Wall Street Journal, correct?  
9 A. Yes.  
10 Q. And this is art that the City owns, right?  
11 A. Correct?  
12 Q. That's correct.  
13 A. That's correct.  
14 Q. But you understood took no effort to see whether the

## Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

17           City could obtain cash out of assets that were hanging  
18           in the Detroit Art Institute as a substitute for going  
19           in and engaging in this negotiation with the Swap  
20           counterparties, correct?  
21     A.     Correct.  
22     Q.     We talked earlier about creditor recoveries and I want  
23           to make sure that I understood your testimony on that  
24           point.  
25                         You understand that Mr. Orr made a proposal  
154: 1       to creditors that's called proposal for creditors back  
2           in June of 2013, correct?  
3     A.     Correct.  
4     Q.     You helped him formulate that proposal, isn't that  
5           right?  
6     A.     Yes.  
7     Q.     The proposal -- I'm going to summarize it but you  
8           should feel free to correct me as somebody who knows  
9           it better and can say it better than I, but basically  
10           put the proposal suggests that unsecured creditors  
11           will share in two billion dollars of bonds that are  
12           issued by the City upon emergence, correct?  
13     A.     Correct.  
14     Q.     And the proposal assumes that the City will have  
15           unfettered access to casino revenues because that's  
16           what its projections show, correct?  
17     A.     Yes.  
18     Q.     So, even if the City has unfettered access to the  
19           casino revenues, its current proposal is still that  
20           the unsecured creditors will just share in this two  
21           billion dollar pot, correct?  
22     A.     That's correct.  
23     Q.     So, is it fair to say that getting access to this  
24           money will not by itself increase creditor recoveries?  
25     A.     No, it's part of the base case plan that we presented  
155: 1       which is the base case recovery we presented on June  
2           14th.  
3     Q.     Right. So, if the court grants the motion and you get  
4           access to it, that will be consistent with the base  
5           case which is consistent with the two billion dollar  
6           offer, right?  
7     A.     Correct.  
8     Q.     So, it won't go up if the court grants you the access  
9           that you're assuming you'll get?  
10     A.     But it will go down if the court does not.  
11     Q.     That's a different question. I'll get to that in a  
12           moment.  
13                         It won't go up if the court grants the  
14           motion, correct?  
15     A.     Correct.  
16     Q.     Your argument if I understood it was that the  
17           casino revenues will be used to invest in the City,  
18           correct?  
19     A.     Revenues of the City are fungible. All I'm saying if  
20           you don't have access to those revenues, then you  
21           don't have the billion dollar plus of revenues that  
22           you thought you had which is supporting not only

## Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

23                   current operations but the reinvestment plan.  
24   Q.   And I will say that I had understood you earlier to  
25                   say if you didn't have access to casino revenues, that  
156: 1               City services would suffer?  
2   A.   In the short-term, yes.  
3   Q.   Yeah. But it's fair to say that you're not proposing  
4                   to obtain the casino revenues, access to them and  
5                   throw them on to the pot of the two billion dollars  
6                   that's already being proposed to unsecured creditors,  
7                   correct?  
11   A.   I've already testified that the access to gaming  
12                   revenues is part of the plan which supports the two  
13                   billion dollar anticipated issuance of notes.  
15   Q.   And you mean that from a feasibility standpoint,  
16                   right?  
17   A.   Yes.  
18   Q.   You mean it will strengthen the City and that will  
19                   make the City more able to perform under the notes and  
20                   that will make the notes more valuable to the  
21                   creditors, right?  
22   A.   That would be one result.  
23   Q.   Let me ask you by how much will creditor recoveries go  
24                   down if the court declines to approve the forbearance  
25                   agreement?  
157: 1   A.   We haven't calculated that plan yet. It would  
2                   certainly be a significant reduction and it would be  
3                   borne primarily by the unsecured creditors as a  
4                   group.  
5   Q.   Prior to July 15th you had not attempted a detailed  
6                   calculation to understand the impact to unsecured  
7                   creditor recoveries if the casino revenues were not  
8                   unfreed, correct?  
9   A.   That's correct.  
10   Q.   So, you don't know whether it's pennies on the dollar  
11                   or dimes on the dollar, correct?  
12   A.   We are already at dimes on the dollar in this --  
13   Q.   There's only pennies left.  
14   A.   We hope there's pennies left.  
15   Q.   There was some -- there was a lot of questioning  
16                   about the financial forecasts, and I'm not going to  
17                   try and reinvent the wheel, but I would ask you to go  
18                   back to that Page 35 that you were discussing  
19                   earlier.  
20                   Do you remember, Mr. Buckfire, being asked  
21                   questions about this page?  
22   A.   I do.  
23   Q.   And I guess I want to be clear that -- I know we're  
24                   coming to the end of 2013, so, we'll move to this  
25                   other page in a second, but at least with respect to  
158: 1               2013 if you put legacy expenditures aside,  
2                   Ernst & Young forecast is of a substantial net  
3                   operating surplus in excess of four hundred million  
4                   dollars, correct?  
5   A.   But how can you put legacy expenditures aside in 2013  
6                   because we were doing all this through the end of  
7                   June.

## Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

8 Q. Fair enough.  
9 A. So, these are the numbers.  
10 Q. Well, these are -- 2013 includes probably a full year  
11 projection, so --  
12 A. Fiscal year ends June 30th.  
13 Q. Oh, so, fiscal year 2013 ends on June?  
14 A. That's correct.  
15 Q. Let's go to 38 then.  
16 A. Okay.  
17 Q. Good correction there. We'll see if it's a big  
18 difference in 2014. So, this is the next fiscal year,  
19 right?  
20 A. Correct.  
21 Q. And this is again a financial forecast prepared by  
22 Ernst & Young, correct?  
23 A. Yes.  
24 Q. Now, I understand your point about the fact that this  
25 doesn't reflect the different initiatives that Mr. Orr  
159: 1 wants to implement, okay, so let me bracket that, I  
2 heard you say that earlier, but if you hold those to  
3 one side and if you also hold legacy expenditures to  
4 one side, what the City's numbers reveals is that it  
5 has a nearly four hundred million dollar net operating  
6 surplus, correct?  
7 A. One could look at it that way.  
8 Q. And all of the cops and the fire department and the  
9 ambulance drivers, their payroll, that's all included  
10 in these numbers, correct?  
12 A. Yes.  
14 Q. And so are their health benefits, correct?  
15 A. Yes.  
16 Q. Okay. So, if I understood it correctly, Mr. Orr wants  
17 to do a billion and a quarter of reinvestment in the  
18 City over the next ten years, correct?  
19 A. That's right.  
20 Q. And that's about 125 million a year, correct?  
21 A. That's correct.  
22 Q. And, so, even if we took the 397 down by his  
23 initiatives by 125 million, you'd still have  
24 approximately 272 million dollars left, correct, in  
25 net operating surplus?  
160: 1 A. Yes.  
2 Q. And that's even with him being able to do all the  
3 wonderful things that he wants to do for the City,  
4 right?  
5 A. That's correct.  
6 Q. So, we're now going to go to the area where I begin to  
7 do complex math which means adding things twice in a  
8 row where I often fall down. But I said it was about  
9 272 and the casino revenues are only about 170 in this  
10 forecast, right?  
11 A. That's correct.  
12 Q. So, even if you didn't have those and even if Mr. Orr  
13 did all his improvements, you'd still have a hundred  
14 million dollar net operating surplus, correct?  
15 A. No, that's actually not the case, and this is not

## Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

16 meant to be the City's plan, it's not the City's plan.  
17 If you are proposing a different plan where the City  
18 plans to liquidates itself, then yes, I guess you  
19 could look at it this way.

20 Q. I'm just referring to the preliminary forecast that  
21 you all put together in this proposal and gave to us.  
22 A. This is not the City's plan and it's not the City's  
23 forecast. This is an illustration of what happens if  
24 you don't do anything.

25 Q. And the key differences between this and what the  
161: 1 City's plan is are the investments that Mr. Orr wants  
2 to make, right?  
3 A. Right.  
4 Q. And the cost reductions he wants to make, right?  
5 A. And the increase in staffing levels across services to  
6 provide higher level services to the City.  
7 Q. But that's in the reinvestment, right?  
8 A. No, it's actually hard to break out that way because a  
9 lot of it is actually in the salaries line and the HR  
10 lines.

11 So, you have to go back to the numbers and  
12 ask me a lot of those questions.

13 Q. The proposed investments that he wants to make, that  
14 he proposes to make that I'm so ruthlessly omitting,  
15 they are in this document, right?

16 A. Not in this projection.

17 Q. They're not in this projection, but they are in this  
18 proposal?

19 A. That's right.

20 Q. He laid them all out in gory detail?

21 A. Yes, he did.

22 Q. He also lays out a number of cost cutting initiatives,  
23 isn't that correct?

24 A. Yes, he does.

25 Q. And one of his goals is also to make the City more  
162: 1 efficient, correct?  
2 A. Yes.  
3 Q. At the same time he also wants to make it operate  
4 better, correct?  
5 A. Correct.  
6 Q. Those two things from a net operating standpoint work  
7 in tension with one another, right?  
8 A. They do over time, but you have to consider the  
9 timetable and when these things are done.  
10 Q. I want to ask you a question about state and federal  
11 aid but I don't want to mix it up into the DIP which I  
12 understand -- which I took to mean earlier was one of  
13 the sensitivities there. I want to go back to June 4,  
14 2011.

15 Prior to June 4, 2011 had you undertaken  
16 any effort to evaluate whether there was either state  
17 aid or federal aid that you could use in lieu of  
18 having to negotiate this deal with the Swap  
19 counterparties?

20 A. We are assuming there is no aid available to the City.  
21 Q. You were assuming that there was none, but had you

## Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

22                   undertaken an effort to determine whether there could  
23                   be some?  
24     A.   I've already testified that I'm not going to discuss  
25                   that.  
163: 1   Q.   And why aren't you going to tell me about that?  
2       A.   It's commercially sensitive information.  
3       Q.   Why?  
4       A.   That's my answer.

**Designation:**

163:25   Q.   And let me first ask you, Mr. Buckfire, had your firm,  
164: 1       you or your firm undertaken any analysis of this  
2                   question? You don't have to tell me what it was.  
3                   Let's go in stages.  
4                   Had you analyzed the problem?  
5     A.   Yes, we did.  
6     Q.   You had analyzed the problem. And is it your  
7                   testimony that divulging the results of that analysis  
8                   would be commercially sensitive?  
9     A.   Yes.  
10    Q.   Is part of the reason for that because of the way any  
11                   potential aid from the City or from the state or the  
12                   feds might interplay with the DIP process, is it the  
13                   way they knit up, is that the problem?  
14    A.   Yes.

**Designation:**

165:18   Q.   Is it your understanding that the Series 2006-B COPs  
19                   were issued with a floating interest rate?  
20    A.   Yes.  
21    Q.   And is it your understanding that the Swap contracts  
22                   were entered into to hedge against the interest rate  
23                   risk associated with the Series 2006-B COPs?  
24    A.   Yes.  
25    Q.   And the Swap contracts accomplish this hedge by  
166: 1       effectively limiting the City's payment obligations  
2                   under the service contracts with respect to the Series  
3                   2006-B COPs to the fixed rate that's set forth in the  
4                   Swap contracts, is that correct?  
5     A.   Correct, which was amended in 2009.  
6     Q.   What was amended?  
7     A.   The original fixed rate was lower in 2006 and it was  
8                   increased slightly in 2009 as part of the amendment.  
9     Q.   The Swap contracts were amended in 2009 --  
10    A.   The rate, the rate was.  
11    Q.   The rate on the Series 2006-B --  
12    A.   That's my understanding.  
13    Q.   Okay. And with the amendment in 2009 the Swap  
14                   contracts still remained in place, correct?  
15    A.   That's my understanding.  
16    Q.   And those Swap contracts are still in place today and,  
17                   therefore, still hedging the interest rate risk today?  
19    A.   Except as modified by the 2009 amendment.  
21    Q.   So, do you agree that from the perspective of the City

# **Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire**

22           with the Swap contracts in place it's as if the  
23           Series 2006-B COPs have a fixed interest rate?  
24     A.     Yes.  
25     Q.     Have you heard of structures like this being referred  
167: 1       to as a synthetic fixed rate of interest?  
2     A.     Yes.

## **Designation:**

167:22   Q.   Is there any benefit to the City from having this  
23           structure with the 2006-B COPs having a floating rate  
24           hedged by the Swap contracts as opposed to merely  
25           issuing those COPs with a traditional fixed rate?  
168: 2   A.   All their debt is now fixed. I mean they are not  
3           taking any interest rate risk as a result of the Swap  
4           that was put on top of the floating rate COPs. That  
5           is the benefit to the City.  
7     Q.     The benefit to the City from the structure is that  
8           it's a comparable interest rate risk exposure for the  
9           City?  
10    A.     They have eliminated the floating rate exposure and  
11           now they have a fixed rate on this debt similar to the  
12           rate exposure they have on the 2005 COPs which are  
13           fixed rate. So, it's all fixed now.

## **Designation:**

172:17   Q.   Did you discuss any legal arguments that the City  
18           might have had against the Swap counterparties with  
19           Mr. Orr?  
20    A.     No.

## **Designation:**

174:24   Q.   You want to give a minute here for your counsel maybe  
25           to object, maybe not, what legal arguments did you  
175: 1       discuss that the City might be able to raise against  
2           the Swap counterparties?  
3           MR. CULLEN: I'm going to object and direct  
4           him not to answer.  
5     A.     I wouldn't have answered anyway, but thank you.

## **Designation:**

175:17   Q.   All right. May I assume that any questions I ask you  
18           about what legal arguments or issues you might have  
19           discussed that the City would have had to assert  
20           against the Swap counterparties, conversations you  
21           would have had with Jones Day people your counsel is  
22           going to object and instruct you not to answer?  
23           MR. CULLEN: You can assume that.

## **Designation:**

175:25   Q.   Slightly different question. Did you have any

## **Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire**

176: 1 discussions with Mr. Orr regarding the probability of  
2 success on legal arguments the City could raise  
3 against the Swap counterparties?  
4 A. Yes.  
5 Q. When did those discussions take place?  
6 A. During May.  
7 Q. Can you tell me about those discussions with Mr. Orr?  
8 MR. CULLEN: Direct him not to answer.

**Designation:**

177: 5 MS. ENGLISH: And if I ask him to tell me  
6 about those conversations, will you direct him not to  
7 answer?  
8 MR. CULLEN: I will indeed.

**Designation:**

177:10 Q. Did you discuss with anyone else the probability of  
11 success that the City might have had on legal  
12 arguments against the Swap counterparties?  
13 A. No.  
14 Q. Were there any written documents or memos that  
15 evaluated the City's legal arguments against the Swap  
16 counterparties?  
20 A. No.  
21 Q. Are you aware of any written analyses that were done  
22 about the legal arguments the City might assert?  
23 A. No.

**Designation:**

178: 6 Q. Going into the start of the negotiations with the Swap  
7 counterparties on June 4th, did you assume that the  
8 Swap counterparties' liens were valid?  
9 A. I did.

**Designation:**

179:12 Q. Can you tell me what the other alternatives were that  
13 you considered?  
14 A. Well, we considered finding another lender to fund the  
15 termination of the Swaps. This is back in May when we  
16 knew the financial condition of the City was dire. We  
17 did not think we could attract a lender to come in to  
18 take out the Swap termination payment at a hundred  
19 cents or even at a discount under the tight time frame  
20 that we had to work with nor did we think we could do  
21 that at a rate of interest that could ever be  
22 acceptable to the City.  
23 Q. Let me stop you right there and ask did you try?  
24 A. No.

# **Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire**

## **Designation:**

180:13 Q. Prior to June 4th, did you submit a request to the  
14 state for aid on behalf of the City?  
15 A. I'm not going to answer that question.  
16 Q. You will not answer even whether the City made a  
17 request for state aid prior to June 4th?  
18 A. It's commercially sensitive information. I  
19 respectfully cannot answer that question.  
20 Q. Was there a request for state aid that was rejected  
21 prior to June 4th?  
22 A. I'm not going to answer that question.  
23 Q. On what basis won't you answer whether there was one  
24 that was rejected?  
25 A. Commercially sensitive information.

181: 1 Q. How is it commercially sensitive? If there was a  
2 state aid request that was rejected, how is that  
3 sensitive now?  
4 A. You're asking me to speculate.  
5 Q. I'm asking you why you're not answering.  
6 A. It's commercially sensitive information.  
7 Q. Tell me why it's commercially sensitive in your view.  
8 A. It would have an impact on our ability to prosecute a  
9 successful DIP financing process for the City at this  
10 point.  
11 Q. It would jeopardize your DIP financing if the public  
12 knew that a state aid request had been rejected prior  
13 to June 4th?  
14 A. You're saying that. I didn't say that.  
15 Q. I'm trying to understand why you won't give us the  
16 information.  
17 A. It's commercially sensitive.  
18 Q. How is it commercially sensitive?

## **Designation:**

181:20 A. I'm not going to answer it.

## **Designation:**

181:22 Q. Just for kicks let's do the same line of questioning  
23 for federal aid, okay? Was there a request made by  
24 the City for federal aid prior to June 4th?  
25 A. I decline to answer that question.

182: 1 Q. On what grounds do you decline to answer?  
2 A. It's commercially sensitive information.  
3 Q. And why do you feel it's commercially sensitive?  
4 A. Because it would have an impact on our DIP financing  
5 process.  
6 Q. Was there a request for federal aid that was rejected  
7 prior to June 4th?  
8 A. I decline to answer that question.  
9 Q. And do you decline on the exact same grounds you've  
10 just given me?  
11 A. Yes.

# Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire

## Designation:

183:25 Q. Did you have any substantive conversations with the  
184: 1 Swap counterparties about whether or not their liens  
2 were valid other than, you know, we threaten to  
3 litigate, we threaten to defend, did you actually get  
4 into a discussion about the validity of their liens  
5 with them?  
6 A. No, I had no other cards to play so I just kept  
7 reminding them we would be aggressive.

## Designation:

184:12 Q. What other unencumbered revenue streams or assets does  
13 the City have?  
14 A. Well, we have income tax revenues, we have property  
15 tax revenues. I'm speaking now in the Chapter 9  
16 context. The state revenues are pledged to three  
17 series of bonds that were issued historically by the  
18 City. So, there really is no other source of revenue  
19 that's available to the City that could be pledged or  
20 used aside from these.  
21 There are, of course, a list of noncore  
22 assets we identified on June 14th that we are  
23 evaluating for potential value but we have reached no  
24 conclusion yet as to how much is available there.  
25 Q. I just want to make sure. You were talking about  
185: 1 state shared revenues are pledged, right, did I get  
2 that correct?  
3 A. They are securing three different series of bonds that  
4 have a pledge of those revenues and that's already  
5 been used.  
6 Q. So, the remaining unencumbered City assets or revenues  
7 are the noncore assets that were listed?  
8 A. Right.  
9 Q. Income tax and property tax?  
10 A. Correct.  
11 Q. Is that all?  
12 A. Well, the gaming revenues if we can eliminate the  
13 collateral agreement.  
14 Q. Is there any reason that the noncore assets, income  
15 tax or property tax could not be pledged as collateral  
16 to secure DIP financing?  
17 A. They could be.

## Designation:

185:18 Q. You testified earlier that if the forbearance  
19 agreement was not approved, it would have dire  
20 consequences for the City, is that correct?  
21 A. Yes.  
22 Q. Does the City have a backup plan if the forbearance  
23 agreement is not approved?  
24 A. Well, we're developing one now. We are proceeding on  
25 the assumption the court will grant relief on this  
186: 1 transaction and let us proceed with it and if they  
2 tell us they won't, we'll have a backup plan.

## **Objectors' Designations From August 29, 2013 Deposition of Kenneth Buckfire**

3 Q. What is the backup plan you're currently considering?  
4 A. It's being developed right now. It would be not the  
5 plan currently proposed.

**Designation:**

190:17 Q. Okay. Do you understand that under certain  
18 circumstances the agreement prohibits the City from  
19 taking action that's inconsistent with the position of  
20 the counterparties in litigation, for instance?  
21 A. That's my understanding.

**Designation:**

201:18 Q. Is it your understanding that after March 1st the City  
19 has another opportunity to challenge anything related  
20 to this agreement?  
21 A. It's not my understanding.  
22 Q. Okay.  
23 A. I don't know.  
24 Q. Okay. Do you recognize there's a possibility then  
25 that the City could be stuck with paying a very large  
202: 1 figure after the Chapter 9 plan and have no ability to  
2 challenge it if -- at some certain stage regardless of  
3 the validity of those liens?  
4 A. That's a possibility.  
5 Q. Okay.

**Exhibit 6C**  
**Excerpts from Deposition of Kevyn Orr**

**In The Matter Of:**

*City of Detroit*

---

*Kevyn Orr*

*August 30, 2013*

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1                   UNITED STATES BANKRUPTCY COURT  
2                   FOR THE EASTERN DISTRICT OF MICHIGAN  
3                   SOUTHERN DIVISION

4  
5       In Re:

6  
7       City OF DETROIT, MICHIGAN           Chapter 9  
8    Case No.13-53846  
9       Debtor.                                  Hon. Steven Rhodes

10                   /

11  
12  
13       The Videotaped Deposition of KEVYN ORR,  
14       Taken at 1114 Washington Boulevard,  
15       Detroit, Michigan,  
16       Commencing at 8:32 a.m.,  
17       Friday, August 30, 2013,  
18       Before Cindy Mendenhall, RPR, CSR-5220.

19  
20  
21  
22  
23  
24  
25

1 BY MR. HACKNEY:

2 Q. Okay. That's correct?

3 A. Yes. That is correct.

4 Q. So if I ask you what your view is on the likelihood  
5 that the City's Swap and validity arguments will  
6 prevail, you will assert the attorney-client  
7 privilege; is that correct?

8 A. Yes, more than likely.

9 Q. If I ask you your view on the likelihood that the  
10 pledge of the gaming revenues under the Michigan  
11 Gaming Act is an invalid pledge, you'll assert the  
12 attorney-client privilege, correct?

13 A. Yes, more than likely.

14 Q. If I ask you questions regarding the likelihood that  
15 the City would prevail on a claim or defense against  
16 the Swap counterparties, you'll assert the  
17 attorney-client privilege, correct?

18 A. Yes, more than likely.

19 Q. And I guess I gotta clarify. When you say more than  
20 likely, I mean are you asserting the privilege with  
21 respect to those types of questions? I'm trying to  
22 save having to --

23 A. Sure.

24 MR. SHUMAKER: Let me state for the record  
25 you can ask questions as to whether those -- those

1 factors were considered by Mr. Orr, but obviously if  
2 you're going to ask what he was -- what he was advised  
3 by counsel, then I'm going to instruct him not to  
4 answer.

5 A. When I say more than likely, that's -- that's exactly  
6 the distinction that I'm trying to make. Did I have  
7 discussions with my counsel? Yes. Did those  
8 discussions take into consideration some of those  
9 factors? Yes. Am I going to tell you what those  
10 discussions were and what, if any, conclusions were  
11 made? No.

12 BY MR. HACKNEY:

13 Q. Okay. Fair enough.

14 On July 15, 2013, the City entered into  
15 what we're going to call the forbearance agreement  
16 with the Swap counterparties and the service  
17 corporations; is that correct?

18 A. Yes.

19 Q. When did negotiations around that agreement with the  
20 Swap counterparties begin after your appointment?

21 A. I think there were discussions about negotiations  
22 almost immediately after my appointment. My specific  
23 knowledge -- when you say negotiations, what do you  
24 mean?

25 Q. Well, let me -- let me ask it a different way, which

1       is isn't it true that Mr. Buckfire was the lead  
2       negotiator for the City on the business terms of what  
3       became the forbearance agreement?

4     A.   Yes.

5     Q.   And Mr. Buckfire has testified that the negotiations  
6       in earnest regarding what became the forbearance  
7       agreement were conducted between June 4th and  
8       June 11th of 2013?

9     A.   I don't recall those specific dates, but I think  
10      that's the right time frame. Let me -- let me try to  
11      be as clear as I can so we can move on. We began  
12      talking, discussing ways with my advisors, without  
13      discussing what we discussed, to provide the City with  
14      liquidity almost immediately upon my appointment. The  
15      negotiations that you're referring to I believe did  
16      occur within that time frame.

17    Q.   Okay. So you don't have a basis as you sit here today  
18      to contradict Mr. Buckfire's recollection of when the  
19      key negotiations over the business terms of the  
20      forbearance agreement were conducted?

21    A.   No. It might be earlier, but that's the approximate  
22      time frame.

23    Q.   And as he was the lead negotiator, he's probably the  
24      guy who would know, right?

25    A.   Sure, absolutely.

1 point during the first week, but they -- they resumed.  
2 My interpretation was that they broke down, and then  
3 they recommenced a second week.

4 Q. Okay. So on -- if there -- to the extent  
5 Mr. Buckfire's right that there was an in-person  
6 June 8th meeting --

7 A. Yeah.

8 Q. -- do you remember what his -- what your marching  
9 orders to him were as he went into that meeting?

10 A. Here again, the concept of marching orders, we were  
11 trying to get to an agreement generally, and I believe  
12 the instructions were to continue to move towards that  
13 process, whatever that was. And so the specific  
14 bid/ask that were going on throughout that time, I  
15 don't -- I don't recall, but the general concept was  
16 to continue to try to move to a point to get to a  
17 discount number or a discount process.

18 Q. Is it fair to say that if I ask you for the specific  
19 ebb and flow of the negotiations between the Swap  
20 counterparties in terms of the precise business  
21 deal --

22 A. Right.

23 Q. -- you would have to defer to Mr. Buckfire's  
24 recollection because he was more intimately involved?

25 A. That's fair. Because Ken was -- Ken would have the

1 direct meetings and then call me back. We'd go back  
2 and forth, and I didn't keep notes and I didn't keep a  
3 calendar, so --

4 Q. I asked you about nondisclosure agreements, but did  
5 the City execute any other agreements of any kind with  
6 the Swap counterparties during this period that you  
7 were negotiating the forbearance agreement?

8 A. No, not that I know of.

(Discussion off the record at 8:59 a.m.)

10 (Back on the record at 8:59 a.m.)

11 MR. HACKNEY: No. Problem. Let's go off  
12 the record.

15 (Recess taken at 8:59 a.m.)

16 | (Back on the record at 9:08 a.m.)

19 BY MR. HACKNEY:

20 Q. Mr. Orr, I want to clear something up. Maybe I've  
21 been saying it the wrong way. I've been using the  
22 term "marching orders" with the respect to the way  
23 that you and Mr. Buckfire operated.

24 A. Right.

25 O. And is a better way to say it that you authorized

1 Mr. Buckfire to negotiate the best possible deal he  
2 could with the Swap counterparties and that's what he  
3 did?

4 A. That's a fair characterization, sure.

5 Q. And at some point did he come out of a meeting and  
6 say, Mr. Orr, this is the best deal that I'm able to  
7 get out of these Swap counterparties and it's my  
8 advice that we take it?

9 | A. Yes.

10 Q. And was that on or about June 11th, 2013, which is the  
11 date he recalls the agreement in principle being  
12 reached?

13 A. Yes.

14 MR. SHUMAKER: Objection to form.

15 BY MR. HACKNEY:

16 Q. And what was the agreement in principle that was  
17 reached as you understood it?

18 A. The agreement was essentially that in exchange for a  
19 reduced optional termination payment -- we'll just  
20 call it the payment under the forbearance agreement --  
21 the Swap counterparties would agree not to trap the  
22 cash, they would agree to release their liens, and  
23 also release their claims, I believe, against your  
24 client, Syncora, and we would have access to that cash  
25 going forward provided we made the discounted payment

1       entities that have long names that I'll only say to  
2       you if you want -- really want me to.

3       A.    We'll stipulate I know what you mean by the service  
4       corporations.

5       Q.    And there are two of them?

6       A.    There are two.

7       Q.    Okay.

8       A.    Police and Fire General Services.

9       Q.    There you go. So you already know them and you said  
10      the names. So the two service corporations are  
11      parties to the forbearance agreement, correct?

12      A.    Yes.

13      Q.    And Mr. Buckfire testified yesterday, I'll represent  
14      to you, that his understanding is that you directed  
15      the service corporations to execute the forbearance  
16      agreement and they did so; is that correct?

17      A.    No.

18      Q.    Okay. Were there arms' length negotiations with the  
19      service corporations?

20      A.    To the best of my knowledge, there was.

21      Q.    And who led those?

22      A.    I'm not quite sure. I know that -- in response to  
23      your question, I did not direct a service corporation.  
24      They were organized by the City. And they are managed  
25      by City employees, but I had no direct -- I gave no

1           direct instruction to either of the service  
2           corporations.

3 Q.       Okay. So my question was about negotiations with the  
4           service corporations.

5 A.       Right.

6 Q.       Who conducted the arms' length negotiations with the  
7           service corporations on behalf of the City?

8 A.       I'm not sure.

9 Q.       Well, you know it wasn't you?

10 A.       Yes, it wasn't me.

11 Q.       And did you ever direct Mr. Buckfire to engage in  
12           direct negotiations with the service corporations?

13 A.       No. **I directed Mr. Buckfire to do whatever needed to**  
14 **get done to get the agreement in principle resolved**  
15 **and signed.** That's what I did, but I did -- said  
16           nothing specific. Just to be responsive to your  
17           question, said oh, go talk to the service  
18           corporations, there was nothing that specific.

19 Q.       So to the extent there was a negotiation that needed  
20           to be had, it was his job to go have it?

21 A.       It was his or someone else on my -- on my  
22           reorganization team's job, yeah, sure.

23 Q.       Well, did you direct anyone else on your team to go  
24           negotiate with the service corporations?

25 A.       No. Once we reached an agreement in principle, I

1 directed my team to more or less go forth and get it  
2 documented and get it done.

3 Q. And the service corporations are legally separate from  
4 the City, correct?

5 A. Yes, they are.

6 Q. Your powers as emergency financial manager do not  
7 extend to the service corporations, correct?

8 A. I haven't examined that question, so I can't answer  
9 you yes or no.

10 O. Can you direct their actions under PA 436?

11 | A. I'm not sure.

12 Q. Do you have any firsthand knowledge that the service  
13 corporations engaged in arms' length negotiations with  
14 the Swap counterparties?

15 A. No.

16 Q. If they had, do you think that's something you would  
17 have likely heard about?

18 MR. SHUMAKER: Objection, calls for  
19 speculation.

20 A. I may have. As emergency manager, there are a number  
21 of things that occur, as you might imagine, on a daily  
22 basis that I may or may not hear of. I might have.

23 BY MR. HACKNEY:

24 Q. As you sit here today, though, can you recall hearing  
25 that there were ongoing negotiations between the

- 1 A. Yes.
- 2 Q. Okay. Portia Roberson --
- 3 A. Um-hm.
- 4 Q. -- is the City's corporation counsel, right?
- 5 A. Yes.
- 6 Q. And she's also on the board of both service
- 7 corporations, correct?
- 8 A. To the best of my knowledge, that's true.
- 9 Q. Do you know who made the decision at the service
- 10 corporations to enter into the forbearance agreement?
- 11 A. I do not.
- 12 Q. Did you have any conversations with either Ms. Johnson
- 13 or Ms. Roberson about the service corporations
- 14 entering into the forbearance agreement?
- 15 A. No.
- 16 Q. Isn't it true that the policy of the City is to
- 17 indemnify the service corporation directors for
- 18 actions they take in their capacity as City employees?
- 19 A. I don't know that.
- 20 Q. You don't know if that's the policy of the City?
- 21 A. I do not. I know the City has an indemnification
- 22 policy. I don't know if it applies to the service
- 23 corporations.
- 24 Q. Okay, but does it apply to the City employees?
- 25 A. It applies to City employees acting within their

1 course and scope of their employment as employees of  
2 the City.

3 Q. Okay. So as you sit here today, you can't say that  
4 that indemnification policy would extend to City  
5 employee actions taken in their capacity as service  
6 corporations --

7 A. Correct.

8 MR. SHUMAKER: Objection, calls for a legal  
9 conclusion.

10 BY MR. HACKNEY:

11 Q. I will -- I'm sorry.

12 A. Okay.

13 Q. As emergency financial manager, you control the salary  
14 of all City employees; isn't that correct?

15 A. As emergency manager.

16 Q. As emergency manager, right.

17 A. Right.

18 Q. Sorry. Is that the proper --

19 A. It changed with Public Act 436. Public Act 72 was EFM  
20 and now I'm an EM.

21 Q. Okay. Got to get my lingo.

22 A. Yeah.

23 Q. And you do, as emergency manager, control the salary  
24 of all City employees, correct?

25 A. I have the authority to control the salary of all City

1       employees. I have not exercised that authority for  
2       all City employees.

3 Q.     Okay. And you have the power to reduce those City  
4       employee salaries to zero if you choose, correct?

5 A.     I think I do, yes.

6 Q.     And you have done that on at least one prior occasion,  
7       I believe, correct?

8 A.     Yes, I did do that.

9 Q.     Okay. Now, are you aware that the insurers, the Swap  
10      insurers, like Syncora and FGIC, contend that the  
11      hedges cannot be terminated without their consent  
12      where there are termination events or events of  
13      default?

14 A.     I have heard that. I m -- I have no independent  
15      awareness of that.

16 Q.     So when did you first hear that?

17 A.     I think it was all caught up in this time frame of  
18      the -- of the discussion after the agreement in  
19      principle, before the forbearance agreement was  
20      reached.

21 Q.     Your best recollection is that you heard that prior to  
22      the execution of the forbearance agreement?

23 A.     I believe it may have been prior to execution.

24 Q.     But you have taken -- you have taken no steps to  
25      evaluate whether the City concurs with the insurers'

**Exhibit 6D**

**Excerpts from Deposition of Kenneth Buckfire**

**In The Matter Of:**

*City of Detroit*

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*Kenneth Buckfire  
August 29, 2013*

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*Original File BUCKFIRE\_KENNETH.txt  
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1                   UNITED STATES BANKRUPTCY COURT  
2                   FOR THE EASTERN DISTRICT OF MICHIGAN  
3                   SOUTHERN DIVISION

4  
5       In Re:

6  
7       CITY OF DETROIT, MICHIGAN   Chapter 9

8                   Case No.13-53846

9       Debtor.

Hon. Steven Rhodes

10                  /

11  
12  
13       The Video Deposition of KENNETH BUCKFIRE,  
14       Taken at 1114 Washington Boulevard,  
15       Detroit, Michigan,  
16       Commencing at 9:31 a.m.,  
17       Thursday, August 29, 2013,  
18       Before Nora Morrissey, RMR, CRR, CSR-2642.

19  
20  
21  
22  
23  
24  
25

1           sometimes you will anticipate probably where I'm going  
2           with the question or think that you anticipate, I  
3           would ask that you to make the transcript clearer, I  
4           will ask that you wait until I complete the question  
5           before you begin your answer.

6       A.   Thank you.

7       Q.   Before you is what's been premarked as Deposition  
8           Exhibit 1, and I assume you have seen this document  
9           before, is that correct?

10      A.   No.

11      Q.   No. Okay. And it is the notice of deposition that  
12           was issued that we are proceeding under today. I'd  
13           like to discuss initially with you the topics about  
14           which you plan to testify at the hearing on the motion  
15           to assume the forbearance and optional termination  
16           agreement and prove the settlement therein.

17                  Do you have in mind the topics that you  
18           intend to testify at the hearing?

19      A.   Yes.

20      Q.   And can you provide those to me?

21      A.   The reason and purpose of the negotiation with the  
22           Swap counterparties and the results thereof as  
23           determined in the forbearance agreement itself, the  
24           financial condition of the City that led us to believe  
25           that this agreement was necessary to rehabilitate the

1       City. Prepared to testify to the general condition of  
2       the City's financials leading up to the execution of  
3       the forbearance agreement.

4       Q. Are there any other topics that you intend to testify  
5       at the hearing concerning the forbearance agreement?

6       A. I'll testify at that point to the status of the DIP  
7       form process that will provide the financing to  
8       execute the City's option under the forbearance  
9       agreement to retire the Swaps.

10      Q. Are there any other topics that you have not mentioned  
11       in your answers that you intend to testify about?

12      A. I'm sure there will be other things but I can't recall  
13       at this time what they might be.

14      Q. Mr. Buckfire, what is your position with Miller  
15       Buckfire?

16      A. Co-founder and co-president of Miller  
17       Buckfire & Company.

18      Q. Miller Buckfire currently is employed as the financial  
19       advisor to the City of Detroit, correct?

20      A. As the investment banker to the City, that's correct.

21      Q. And when was Miller Buckfire first engaged by the City  
22       as investment banker?

23      A. We were first engaged in July of 2012 for a 60-day  
24       review of the City's financial condition. We were  
25       re-engaged on January 8th of this year to continue to

1       advise the City on its financial condition and  
2       financial alternatives. Both were -- were hired  
3       pursuant to an RFP process to which we submitted a  
4       proposal.

5     Q.   When you were hired in July 2012, can you describe the  
6       scope of services that Miller Buckfire was engaged to  
7       provide?

8     A.   As I mentioned earlier, we were engaged to do a  
9       general financial review of the City's financial  
10      condition particularly with respect to its ability to  
11      service its debt obligations.

12    Q.   Were there specific tasks that you were asked to  
13      perform in connection with doing a general financial  
14      review of the debt obligations?

15    A.   No, we were engaged to do a general financial review  
16      and advise the mayor and the chief financial officer  
17      as to what those financial conditions implied for the  
18      City's ability to operate in the ordinary course.

19    Q.   That engagement began in July 2012 is what you  
20      testified to, is that correct?

21    A.   Correct, and ended on August 31st.

22    Q.   Very good. I would point out that I would ask you to  
23      wait until I ask the question, though.

24                   Miller Buckfire was then re-engaged on  
25      January 8th of 2013, is that correct?